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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No.

JUDGE LELAND W. GEILER,
Petitioner,

v.

THE COMMISSION ON JUDICIAL QUALIFICATIONS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

Judge Leland W. Geiler, the petitioner herein, respectfully requests that a writ of certiorari issue to review the opinion and judgment entered in these proceedings on October 25, 1973, by the Supreme Court of California.

OPINION BELOW

The opinion of the Supreme Court of California, dated October 25, 1973, is reported at 10 Cal.3d 270, 110 Cal. Rptr. 201, and at 515 P.2d 1. It is reprinted in the appendix hereto, p. 1a, *infra.*

The unreported findings of the Commission on Judicial Qualifications, dated August 4, 1972, and submitted to the Supreme Court of California on August 29, 1972, are quoted in full in the opinion of the Supreme Court, in footnotes 6 and 7 thereof, thus making unnecessary their reprinting herein. The unreported conclusions and recommendations of the Commission are also adequately identified and described in the Supreme Court's opinion, the major conclusion and recommendation of the Commission being set forth in full in that opinion at pp. 17a-19a, *infra*.

The Report of the Masters, dated July 5, 1972, which is not officially reported, is set forth in the appendix hereto, p. 21a, *infra*.

JURISDICTION

The opinion and judgment of the Supreme Court of California were entered on October 25, 1973. A timely petition for rehearing was entertained by that court and denied on its merits on November 15, 1973. See appendix hereto, p. 1a, *infra*.

On February 4, 1974, on timely application, Mr. Justice Douglas ordered that the time for filing this petition for writ of certiorari be extended to and including April 13, 1974. This petition has been filed within that extended period.

This Court's jurisdiction is invoked under 28 U.S.C. § 1257(3).

QUESTION PRESENTED

An elected state court judge has been ordered removed from office by the Supreme Court of California on charges of misconduct involving both his discre-

tionary judicial acts and his personal off-the-bench relationships with other court personnel. Such removal was ordered by application of two standards of judicial misconduct contained in Article VI, Section 18(c), of the California Constitution, to wit, (1) "wilful misconduct in office," and (2) "conduct prejudicial to the administration of justice that brings the judicial office into disrepute."

The question presented is whether these California constitutional standards of judicial misconduct, on their face and as interpreted and applied to the alleged misconduct in this case, are impermissibly vague under the principles of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment 14, Section 1:

". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; . . ."

California Constitution, Article VI, Section 18(c):

"On recommendation of the Commission on Judicial Qualifications the Supreme Court may (1) retire a judge for disability that seriously interferes with the performance of his duties and is or is likely to become permanent, and (2) censure or remove a judge for action occurring not more than 6 years prior to the commencement of his current term that constitutes wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute."

STATEMENT OF THE CASE

The petitioner, Leland W. Geiler, was appointed in 1966, by the Governor of California, to serve as a Judge of the Municipal Court for the Los Angeles Judicial District of Los Angeles County. In 1970, he was unopposed for election to this judicial post, and was thus elected to a 6-year term.

This proceeding began on January 21, 1972, when the respondent Commission on Judicial Qualifications filed and served on the petitioner formal charges that, as a Judge, he had engaged in conduct that constituted "willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute."[1] The specifications of the charges were in six counts, each count containing multiple incidents. These specifications, in general, were:

(1) Count One alleged that the petitioner committed two assaults in the courthouse on the persons of an attorney and a court officer, the two specified incidents being lettered A and B.

(2) Count Two alleged that the petitioner had engaged in a course of conduct in the courthouse, consisting of five specified instances lettered A through E,

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[1] Previously, on March 26, 1971, the Commission on Judicial Qualifications, on its own motion pursuant to Rule 904 of the California Rules of Court, resolved to conduct a preliminary inquiry into the petitioner's judicial conduct. The formal charges, dated January 21, 1972, were made as a result of that preliminary investigation.

Despite his request, the petitioner was never informed by the Commission as to the source of the charges made against him. Nor was petitioner allowed to engage in any sort of discovery procedure prior to the evidentiary hearing before the Special Masters.

"involving the subject of sex which brought the judiciary into disrepute."

(3) Count Three alleged that the petitioner had engaged in a course of conduct, consisting of eight specified instances lettered A through H, "of addressing counsel and court attaches in disparaging, vulgar, and unjudicial terms."

(5) Count Five alleged that, on three specified occasions lettered A through C, the petitioner had "unlawfully ordered the court reporters to delete material from two preliminary hearing transcripts."

(6) Count Six was the most significant charge. It alleged that in nine preliminary hearings (identified by case numbers, defendants' names, dates and names of counsel), petitioner had "arbitrarily and capriciously relieved the public defender and appointed private counsel." This sixth count further alleged that the "defendants in all nine cases were eligible for representation by the Public Defender's Office," and in all these cases "the Public Defender's Office was ready, willing, and able to properly represent the defendant." It was further alleged that the appointed private counsel in these cases then "entered a plea of guilty for the defendant," and in none of these cases "was there an assertion of a conflict of interest."

The petitioner vigorously denied the allegations of misconduct in all six counts, though explaining that on some occasions he may have made "kidding" remarks in talking to court personnel or attorneys in his courtroom. He flatly denied that he had engaged in any assault on the person of any court officer or attorney. As to the critical Count Six, the petitioner's answer alleged that:

(1) The nine specified cases were ones that would have been reduced to a misdemeanor if the defendant had been bound over to the Superior Court.

(2) In all nine cases, the defendant had been confined to jail or otherwise held for a period of time, and would have been bound over to the Superior Court before he could be sentenced. In each case, the defendant had "earnestly requested that he be given the right to plead guilty to a misdemeanor and to be sentenced at that time in the Municipal Court."

(3) In each case, the penalty to be given the defendant for the misdemeanor to which he pleaded guilty in the Municipal Court was approved by the District Attorney and by the defendant.

(4) In each case, the Public Defender had refused to permit the defendant to plead guilty to a misdemeanor in the Municipal Court and had insisted upon having the case transferred to the Superior Court. In no case did the Public Defender "ever give any substantial explanation or reason for attempting to remove the case in that way, except perhaps to perpetuate the activities of the Public Defender in connection with the case."

(5) In each case, the petitioner Judge had arranged with private counsel to accept appointment to represent the defendant without compensation "for the sole purpose of permitting the defendant to enter a plea of guilty in accordance with his choice, and in each such case, private counsel was given opportunity to confer with the defendant to satisfy themselves that the plea was proper and was for the best interests of the defendant."

(6) Finally, the petitioner asserted his belief that, in accepting the guilty pleas, he had acted in the best interests of the defendants and the administration of justice. His actions, he said, had "saved the county thousands and thousands of dollars of unnecessary expense in taking the case up to the Superior Court for the purpose of having the same or substantially the same plea and penalty imposed, but after considerable delay and expense to the defendants." The offices of the District Attorney and the sheriff had congratulated petitioner on his judgment and acts in accepting pleas in such cases "and the defendants have been sometimes pathetically appreciative of this opportunity to expedite their removal from jail and to rehabilitate themselves." No one, asserted petitioner, had ever criticized him for these acts "with the possible exception of the Public Defender's office."

Three Superior Court judges from Los Angeles County[2] were thereafter appointed by the Supreme Court of California to act as Special Masters for the taking of evidence respecting these various charges. The Masters were directed to report their findings and recommendations to the Commission on Judicial Qualifications, which in turn was authorized to report its own findings and recommendations to the Supreme Court.

The hearings before the Masters consumed 21 court days, during which petitioner presented evidence that, if believed, would have compelled dismissal of all the

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[2] Footnote 3 of the opinion below (see p. 3a, *infra*, of the appendix hereto) indicates that only two of the Masters were Superior Court judges. But the third judge, identified in that footnote as a Municipal Court judge, was elevated to the Superior Court before the hearings began.

charges against him. He vigorously denied, for example, that he had physically assaulted anyone, explaining that the incidents in question were simply acts of friendly "humorous horseplay" with court personnel who were in no way offended or injured thereby.[3] Judge Geiler's testimony, supported by that of his bailiff, clearly showed that he had not used vulgar language on any of the occasions described in the Count Three charges; and as to none of those incidents did the prosecution produce any corroborating witnesses.[4]

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[3] The Masters found, as to the so-called "dildo" incident specified in Count One-A, that Judge Geiler's conduct was indeed only "an attempt at what he believed to be humorous horseplay," and that he "did not intend an offensive touching nor a civil or criminal assault." His subsequent courtroom remarks were found to be "not a threatened assault." See appendix hereto, p. 24a, *infra*.

As to the so-called "goosing" incident, Count One-B, the Masters found that the "victim," a friendly court commissioner, had not been offended, and that the incident had not created a scene. No civil or criminal assault was found. See appendix hereto, p. 24a, *infra*. In fact, the commissioner himself, who was the only prosecution witness on this matter, could barely remember the incident, and was not even certain that Judge Geiler was the one who had touched him.

[4] In the course of finding Judge Geiler guilty of making certain offensive remarks about or in the presence of his female law clerk (Mrs. Michael Provencio), as specified in Count Three, the Masters noted that the law clerk had registered no objection until after she had been reprimanded by Judge Geiler and then transferred by him to another division of the Municipal Court. The Masters also noted that the Judge's remarks, to the extent that they were in fact uttered, "were undoubtedly provoked by her [the law clerk's] general demeanor and previous references to her personal sex life." See appendix hereto, p. 28a, *infra*.

To that extent, therefore, the Masters confirmed Judge Geiler's claim that most of the alleged vulgarities were the product of the law clerk's vindictive imagination, and that her own life style and vocabulary were such that she could not have been offended by such remarks, if they were in fact made.

Judge Geiler further testified, as to the Count Six charges, that at all times he had acted in good faith and in a judicious manner, exercising what he conceived to be his sound judicial discretion, by relieving the public defenders and appointing other defense counsel in the specified cases.[5]

The prosecuting examiners, representing the Commission, were unable to present credible testimony to support any of the various charges in Counts Two, Four and Five, and those charges quickly disappeared from the proceedings upon the Masters' findings that these charges were "not proved." See appendix hereto, pp. 25a-36a, *infra*. But the examiners did present evidence, which obviously was believed by the Masters, that at least one of the "assaults" specified in Count One and four of the obscene remarks specified in Count Three had in fact occurred. The other alleged incidents in Counts One and Three were found "not proved."

The examiners also failed in their effort to prove, at least to the satisfaction of the Masters who heard the testimony, that petitioner was guilty of Count Six. The Masters' Report found, from the evidence submitted, that Judge Geiler's actions in the nine speci-

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[5] As the Supreme Court below noted (see p. 13a, *infra*), the Masters found "mutual hostility between petitioner and the public defender's office." The Masters also stated (see p. 39a, *infra*), that "Some members of the Public Defender's Office were quite hostile toward Judge Geiler." It was petitioner's contention that the Count Six charges were the vindictive result of this hostility.

The Commission, however, found that petitioner was responsible for this hostile relationship, and that his substitutions of counsel were "the direct result of petitioner's hostile attitude toward deputy public defenders." See appendix hereto, p. 13a, *infra*.

fied cases "were in good faith and with the intent to dispense substantial justice to both the people and the defendants" and that, "although his actions were arbitrary in some cases, they should not be characterized as capricious because they were made in good faith." See appendix hereto, pp. 40a-41a, *infra.*

The Masters, in recommending that Judge Geiler be censured rather than removed from office, found that of the 23 charges contained in Counts One through Six, only five had been proved—Counts One-B, Three-A, Three-D, Three G, and Three H. See p. 41a, *infra.* The other 18 charges were found either "not proved" or not violative of any misconduct standard, including the whole of Count Six.

On the successive *de novo* considerations of the record by the Commission and by the Supreme Court, the five charges that the Masters found proved were likewise found proved. But the Commission and the Supreme Court disagreed with the Masters as to four other charges that the Masters had found "not proved" —Counts One-A, Three-B, Three-C and Six. Thus, in the findings of the Commission and of the Supreme Court, nine of the 23 charges were considered proved. On that basis, the Commission, by a 7-2 vote, recommended that Judge Geiler be removed from office, rather than censured or reprimanded. And on that same basis, the Supreme Court accepted the Commission's recommendation of ouster, and made its own determination that Judge Geiler be removed from office.

In tabular form, the charges as to which Judge Geiler now stands convicted may be summarized as follows:

	Findings by:		
Charges	Masters	Commission	Supreme Court
One — A	Not Guilty	Guilty	Guilty
— B	Guilty	Guilty	Guilty
Two — A	Not guilty	———	———
— B	No violation	———	———
— C	No violation	———	———
— D	Not guilty	———	———
— E	Not guilty	———	———
Three — A	Guilty	Guilty	Guilty
— B	Not Guilty	Guilty	Guilty
— C	Not Guilty	Guilty	Guilty
— D	Guilty	Guilty	Guilty
— E	Not guilty	———	———
— F	Not guilty	———	———
— G	Guilty	Guilty	Guilty
— H	Guilty	Guilty	Guilty
Four — A	Not guilty	———	———
— B	Not guilty	———	———
— C	Not guilty	———	———
— D	Not guilty	———	———
Five — A	Not guilty	———	———
— B	Not guilty	———	———
— C	Not guilty	———	———
Six	No violation	Guilty	Guilty

Based upon these various findings, the Masters, the Commission and the Supreme Court made their respective recommendations, conclusions and determinations respecting the penalty to be imposed on Judge Geiler. The Masters recommended censure only; the Commission (by a split vote) recommended removal from office; and the Supreme Court independently determined

fied cases "were in good faith and with the intent to dispense substantial justice to both the people and the defendants" and that, "although his actions were arbitrary in some cases, they should not be characterized as capricious because they were made in good faith." See appendix hereto, pp. 40a-41a, *infra.*

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— B	Not Guilty	Guilty	Guilty
— C	Not Guilty	Guilty	Guilty
— D	Guilty	Guilty	Guilty
— E	Not guilty	———	———
— F	Not guilty	———	———
— G	Guilty	Guilty	Guilty
— H	Guilty	Guilty	Guilty
Four — A	Not guilty	———	———
— B	Not guilty	———	———
— C	Not guilty	———	———
— D	Not guilty	———	———
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— B	Not guilty	———	———
— C	Not guilty	———	———
Six	No violation	Guilty	Guilty

Based upon these various findings, the Masters, the Commission and the Supreme Court made their respective recommendations, conclusions and determinations respecting the penalty to be imposed on Judge Geiler. The Masters recommended censure only; the Commission (by a split vote) recommended removal from office; and the Supreme Court independently determined

and ordered that Judge Geiler be removed from office, but "if otherwise qualified [he] be permitted to practice law in the State of California." See appendix hereto, pp. 20a-21a, *infra*.

In reaching these varying recommendations and conclusions, the Masters, the Commission and the Supreme Court all sought to apply to the findings of guilt two of the standards of judicial misconduct specified in Article VI, Section 18(c), of the California Constitution. That constitutional provision authorizes the Supreme Court, on recommendation of the Commission, to censure or remove a state court judge for action that constitutes:

(1) "wilful misconduct in office,"

(2) "wilful and persistent failure to perform his duties,"

(3) "habitual intemperance," or

(4) "conduct prejudicial to the administration of justice that brings the judicial office into disrepute."

Only two of those standards, numbered above as (1) and (4), were considered relevant to Judge Geiler's case. And only those two standards were in fact utilized by the three bodies that assessed his conduct.

However, there was significant disagreement among these three bodies as to which of the two standards applied to which action of Judge Geiler. Using again the tabular form, this disagreement can be expressed as follows, using the symbol "(1)" to refer to the standard of "wilful misconduct in office," and the symbol "(4)" to refer to the standard of "conduct

prejudicial to the administration of justice that brings the judicial office into disrepute":

Counts	Masters	Commission	Supreme Court
One-A:	No violations.	Changed to violations of both (1) and (4).	Changed again to a violation of (4) only.
One-B:	Violation of (4) only.	Agreed	Agreed
Three-A:	Violation of (4) only.	Agreed	Agreed
Three-B:	No violations.	Changed to a violation of (4) only.	Agreed
Three-C:	No violations.	Changed to a violation of (4) only.	Agreed
Three-D:	Violation of (4) only.	Agreed	Changed to a violation of (1) only.
Three-G:	Violation of (4) only.	Agreed	Changed to a violation of (1) only.
Three-H:	Violation of (4) only.	Agreed	Agreed
Six:	No violations.	Changed to violations of both (1) and (4).	Agreed as to violations of both (1) and (4), but actions also found "unlawful."

Such, then, was the history of the application to Judge Geiler's actions of the two constitutional standards of judicial misconduct, as applied first by the Masters, then by the Commission and finally by the Supreme Court of California.

RAISING THE FEDERAL CONSTITUTIONAL QUESTION

In making their respective findings and recommendations, the Masters and the Commission were not acting as judicial bodies.[6] Nor were they charged with the judicial function of interpreting the judicial misconduct standards set forth in the California Constitution. They could only read and seek to apply the face of those constitutional standards, there being no prior decision of the Supreme Court that gave any authoritative interpretation of the standards. Thus it was inappropriate, and indeed impossible, for the petitioner to have sought to raise before the Masters or the Commission any federal constitutional questions stemming from a definitive reading of those standards by the Supreme Court, a reading that alone could determine how those standards should be applied to the facts of this case.

As its opinion below reveals, the Supreme Court of California considers itself charged, in judicial misconduct matters, with the independent functions of: (1) deciding the appropriate standards for the Commission to employ in reviewing the Masters' Report, and for the Supreme Court to employ in reviewing the Commission's recommendations; (2) making a detailed *de novo* review of the full record and independently determining whether there was "clear and convincing evidence" to support the Commission's findings; (3) making the Supreme Court's own findings and conclusions in order to render its ultimate and inde-

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[6] Article VI, Section 8, of the California Constitution provides that the Commission on Judicial Qualifications shall consist of 5 lower court judges, 2 practicing attorneys, and "2 citizens who are not judges, retired judges, or members of the State Bar." See footnote 1 of the opinion below, p. 2a, *infra*.

pendent determination whether to censure or remove a judge; and (4) making a definitive interpretation, and application to the facts, of the relevant standards articulated in the California Constitution. See particularly footnote 13 of the Supreme Court's opinion below, at p. 20a, *infra,* of the appendix hereto. In all those four respects, the Supreme Court's decision in this case was novel and unanticipated. It is truly a landmark decision on all these matters.

As indicated, the Supreme Court had not had a prior opportunity to determine the meaning and scope of the two constitutional standards here in question for censuring or removing a state judge from office. Not until its opinion in this case, rendered on October 25, 1973, did the Supreme Court provide any kind of an authoritative gloss to these constitutional provisions. As thus restated and refined in the opinion below, the applicable two standards of judicial misconduct have come to mean as follows:

(1) The standard of "wilful misconduct in office" has been construed "as connoting *something graver than the 'lesser included offense'* of 'conduct prejudicial to the administration of justice that brings the judicial office into disrepute.' " See p. 16a, *infra;* emphasis added. This "more serious charge should be reserved for unjudicial conduct which a judge acting in his judicial capacity commits in bad faith." *Ibid.*

(2) The "bad faith" which has now been said to adhere to this "graver offense" has been interpreted to mean, in the context of the Count Six charges against Judge Geiler and his actions in removing public defenders, the intentional commission of acts "which he knew or should have known were beyond his lawful power." This is now described as "the most insidious

kind of official lawlessness—disregard for the statutory and constitutional rules by which a society of millions and a heritage of centuries have sought to preserve fundamental fairness within a legal system which cannot escape the inherent imperfections of mankind." See p. 19a, *infra.* Thus, under the standard as so construed, petitioner's "bad faith" has been said to be "directed towards our legal system itself; his arbitrary substitutions of counsel because of personal beliefs as to the defendant's guilt and his personal hostility to their counsel smacks of an inquisitorial intent to serve imagined truth at the expense of justice." See p. 20a, *infra.* Such conduct, in short, has been said to be "not only unjudicial but unlawful as well," within the expanded meaning of the first or graver standard. See p. 19a, *infra.*

(3) The "lesser" standard—"conduct prejudicial to the administration of justice that brings the judicial office into disrepute"—has now been interpreted by the Supreme Court to apply to "conduct which a judge undertakes *in good faith* but which nevertheless would appear *to an objective observer* to be not only unjudicial conduct but conduct prejudicial to public esteem for the judicial office." See p. 16a, *infra;* emphasis added.

(4) This second or "lesser" standard has further been said to be applicable as well to "wilful misconduct out of office, i.e. unjudicial conduct committed *in bad faith* by a judge not then acting in a judicial capacity." See footnote 11 of the opinion below, p. 16a, *infra;* emphasis added.

Such are the definitive constructions accorded the California judicial misconduct standards, out of which arise the federal constitutional problems of vagueness.

Since those problems could not effectively have been raised earlier, and since the particular constructions and refinements could not have been foreseen, this becomes one of those rare but classic situations where a petition for rehearing, addressed to the definitive restatement of the standards, is the first and only opportunity to raise the federal constitutional problems before the highest state court. In such a context, this Court has always considered the raising of federal claims for the first time in the petition for rehearing as "timely, since it [the federal claim] was raised at the first opportunity." *Brinkerhoff-Faris Trust Co.* v. *Hill,* 281 U.S. 673, 677-678 (1930); *Missouri ex rel. Missouri Ins. Co.* v. *Gehner,* 281 U.S. 313, 320 (1930); *Herndon* v. *Georgia,* 295 U.S. 441, 444 (1935), and cases there cited. That is true even though the petition for rehearing be denied without comment. See, generally, Stern and Gressman, Supreme Court Practice 125 (4th ed. 1969).

Thus it was sufficient, in seeking rehearing of the novel decision of the Supreme Court of California, that petitioner did raise federal constitutional objections to the vagueness of the California judicial misconduct standards, as construed. At page 5 of that petition, for example, the petitioner protested that the standards "were so vague and uncertain as to violate the constutional guaranty of due process," citing this Court's decision in *Papachristou* v. *City of Jacksonville,* 405 U.S. 156, 168-169 (1972), and the lower courts' decisions in two cases now pending before this Court for decision—*Secretary of the Navy* v. *Avrech,* No. 72-1713, and *Parker* v. *Levy,* No. 73-206. All those cited cases deal with the federal due process implications of the vagueness doctrine.

But the petitioner here did more than protest, by way of the rehearing petition, the novel construction of the judicial misconduct standards contained in the opinion below. In his original brief to the Supreme Court, entitled a Petition for Review, the petitioner had asserted (pp. 9-10, 21, 24) that these standards on their face were vague and uncertain, relying upon federal decisions applying federal due process concepts. He had further asserted in that brief (pp. 13-18) that his removal from office under these standards would invade his First Amendment free speech rights, as well as the due process requirements for removal from public office. Petitioner's reply brief, also filed before the decision below was rendered, repeated (p. 9 ff.) the assertion that the standards were vague and uncertain, and that his free speech rights under the First Amendment had been circumscribed.

Petitioner thus raised, in a timely fashion, federal due process objections to the standards in question, both as written in the California Constitution and as construed by the Supreme Court of California. That court's failure to mention or consider such objections in its written opinion must be taken as a rejection of the claims. This Court, of course, has jurisdiction to review such a rejection of federal constitutional claims. If a federal claim has been properly raised, as was done here, and "[i]f the necessary effect of the judgment has been to deny the claim, that is enough." *New York ex rel. Bryant* v. *Zimmerman*, 278 U.S. 63, 67 (1928).

REASONS FOR GRANTING THE WRIT

1. The Decision Below Raises an Important and Novel Constitutional Problem, of Concern to All Fifty States, Relative to the Adequacy of Standards Governing Judicial Conduct.

For certiorari purposes, the decision below is important, unprecedented, and productive of confusion in the vital area of judicial ethics.[7] It presents a square confrontation between the public interest in eliminating the unfit from the bench and the constitutional interest in providing adequate standards to govern judicial conduct and to warn against transgressions thereof.

Drawing the proper constitutional line between these two great interests is not a concern of California alone. All states provide some constitutional form of removal of judges. Forty-six states have impeachment provisions. Twenty-five states provide for some form of judicial commission or tribunal regulating the judiciary. Twenty-eight states allow for address, seven utilize recall, and four provide for a special board.[8] The California removal-discipline system is notable mainly because it is the prototype of the so-called "commission" procedure, whereby a commission has been established

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[7] The decision below by the Supreme Court of California, a highly respected and influential tribunal, has been termed "an unprecedented action" by a commentator in the American Bar Association Journal. 60 A.B.A.J. 227 (1974).

The respondent Commission on Judicial Qualifications itself has proclaimed that in this case "the California Supreme Court for the first time in history removed a judge from office following Commission proceedings." 1973 Report of the Commission on Judicial Qualifications to the Governor, p. 2 (Feb. 1974).

[8] See Braden and Cohn, The Illinois Constitution: An Annotated and Comparative Analysis 375 (1969); Note, Remedies for Judicial Misconduct: Removal and Discipline of Judges, 41 N.Y.U.L. Rev. 149, 175-194 (1966); Note, 84 Harv.L.Rev. 1002, 1008 (1971).

to investigate complaints, hold hearings, make findings of fact, and recommend sanctions to the highest state court, which alone has the power to remove or otherwise discipline a judge.[9]

Thus all fifty states are affected by the federal due process problems created by the California decision below. Whatever their mechanisms for judicial discipline, all the states need to know how generalized they may be in articulating their standards of judicial misconduct before colliding with the vagueness doctrines engrained in the Due Process Clause of the Fourteenth Amendment.

The standards so far erected by the states run the gamut from the most nebulous to the most precise. At the one extreme are those eleven states that rely upon some formulation of the "reasonable cause" prescription as the basis for removal.[10] More than one-third of

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[9] The California Commission on Judicial Qualifications, with jurisdiction over all levels of the state judiciary, was established in 1960. About 24 states follow the California Commission system.

California's "commission" system has been termed one of the four notable systems of judicial discipline among the states, the other three main systems being the New Jersey system of tight court administration, the New York system of a special court on the judiciary, and the Illinois system of a special court-commission. See Frankel, Judicial Discipline and Removal, 44 Tex.L.Rev. 1117, 1128-1130 (1966); Frankel, Judicial Discipline and Removal—The California Plan, 58 Ill.B.J. 510 (1970); Braithwaite, Who Judges the Judges? Ch. 6, 81-95 (American Bar Foundation, 1971).

[10] The eleven states are Kentucky, Louisiana, Michigan, Mississippi, New Hampshire, Nevada, New York, South Carolina, Tennessee, Texas and Washington. This listing, and those that follow in footnotes 11 through 19, *infra.*, is taken from the valuable catalogue of state judicial removal provisions in Hall, Judicial Removal for Off-Bench Behavior: Why? 21 J.Pub.L. 127, 129-131 (1972).

In *Friedman* v. *State*, 24 N.Y.2d 528 (1969), it was said that the "for cause" standard "is no more vague than standards of 'misconduct' . . ."

the states authorize removal for corruption or "wilful misconduct in office"—which is one of the standards in the California Constitution that is involved in this case.[11]

A slightly larger number of states permit the removal of judges for a "misdemeanor in office," [12] which is less restrictive than the provision in several states prescribing ouster for engaging in conduct or committing an offense that involves moral turpitude.[13] Greater specificity is sometimes found in standards defining the criminal or anti-social activity that can lead to ouster, such as conviction of a felony, "habitual drunkenness," "intemperance," "gambling" and illegal use of drugs.[14]

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[11] In addition to California, the other states employing such a standard are Alabama, Indiana, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, South Dakota, Tennessee, Virginia, Washington and West Virginia.

[12] In this listing are Arizona, Delaware, Florida, Idaho, Iowa, Kansas, Louisiana, Maine, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Rhode Island, South Dakota, Utah, West Virginia and Wyoming.

[13] In that category are found Alabama, California, Colorado, Missouri, Ohio, Oklahoma and Oregon.

[14] North Carolina warns any judge involved in "any criminal matter, the conviction whereof would tend to bring his office into public contempt." N.C.Gen.Stat. § 123-5 (1964).

Removal sanctions for conviction of a felony or of any crime are found in Arizona, Colorado, Florida, Georgia, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Mexico, North Dakota, Pennsylvania, South Dakota.

Removal for a "high crime" is permitted in Arizona, Delaware, Indiana, Louisiana, Montana, Utah, West Virginia and Wyoming.

Drunkenness or intemperance can lead to removal in Alabama, California, Colorado, Florida, Hawaii, Louisiana, Missouri, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Texas and Vermont. Gambling is specified by Mississippi, and illegal use of drugs is mentioned by Oregon.

Approaching the other end of the spectrum are the various standards used to assess judges who escape removal sanctions couched in terms of specified criminal conduct. Such standards range from "gross immorality" [15] and "during good behavior" [16] to the more elusive one here employed by California—"conduct prejudicial to the administration of justice that brings the judicial office into disrepute." [17] Of similar caliber are such standards as "conduct unbecoming a member of the judiciary" [18] and "conduct evidencing unfitness for judicial office." [19] Other states have also made violations of the canons of professional or judicial ethics a ground for sanctions against a judicial violator.[20]

The two California standards here involved are at the center of this nationwide mix. The "wilful misconduct in office" standard is used in 18 other states; and

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[15] West Virginia specifies "immorality."

[16] Massachusetts, New Hampshire and New Jersey use "during good behavior."

[17] California's formulation of this standard is also used in Hawaii, Maryland, Pennsylvania, Tennessee, Vermont, and Virginia.

[18] Florida uses this standard.

[19] This formulation is found in New Jersey, Texas and Vermont.

[20] Connecticut and Pennsylvania so provide. Ohio prescribes removal only where the violation of a canon results in a "substantial loss of public respect for the office." Ohio Rev. Code Ann. § 2701.12 (Supp. 1970).

Among the American Bar Association's Canons of Ethics is the following: "*4. Avoidance of Impropriety.* A judge's official conduct should be free from impropriety and the appearance of impropriety; he should avoid infractions of the law; and his personal behavior, not only upon the bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach."

the second standard ("conduct prejudicial to the administration of justice," etc.) is used in six other states. But the constitutional problem created by the decision below affects more than the sufficiency of these two types of standards. The due process requirements of adequate notice have an obvious impact on the formulation and application of all types of standards of judicial misconduct. To what degree of notice are the judicial transgressors entitled, as a matter of federal due process? What policy matters, what delineations of judicial misconduct, does the federal Due Process Clause allow to be delegated to the commission or court that sits in *ad hoc* judgment of particular transgressors?

Strangely enough, those questions are neither asked nor answered in all the vast outpouring of literature during the last decade, literature that has accompanied the establishment of mechanisms for removing from the bench the corrupt and the unfit. With rare exceptions,[21] the emphasis has always been on the need to establish more efficient and more speedy methods for ousting those judges whose actions are thought to discredit the judiciary. Definitions of judicial misconduct seem to have been proposed and adopted with an eye directed more at achieving ease of removal than at insuring against arbitrary removal action.

Like Topsy, the state judicial removal systems have grown during the past decade or two without any internal concerns about due process limitations, and

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[21] The most helpful and penetrating discussion of the problem appears in a case note in 84 Harv.L.Rev. 1002 (1971). That note emphasizes (at 1008) that care should be taken to "insure that a system of judicial discipline will not be expanded into a roving commission for the enforcement of current standards of morality."

without any definitive guidance on the matter from this Court.[22] On but two occasions in the last 10 years has the Court been asked to review, on appeal, the sufficiency of state standards of judicial misconduct. Both appeals asserted that the "for cause" standard, as used in New York and Illinois respectively, was unconstitutionally vague. Both appeals were dismissed for want of a substantial federal question. *Friedman* v. *New York,* 397 U.S. 317 (1970); *In re Napolitano,* 401 U.S. 951 (1971).[23] But neither dismissal order of the Court pretended to provide any guidelines for the state removal systems. Neither order can rightly be treated as this Court's blanket approval of any and all state judicial misconduct standards, however vague and uncertain they may be.

The time has now come for this Court to explore this important and recurring due process problem. As the legitimate drive to cleanse the judiciary of the unfit continues unabated, this Court must determine if there are any due process limitations to that program. Are state court judges to be exempt from the established due process requirement that *all persons* "be informed

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[22] In *Chandler* v. *Judicial Council,* 398 U.S. 74 (1970), this Court held that a federal judge, who had been relieved of many of his duties by the Judicial Council for the Tenth Circuit on a finding that he had not discharged his duties efficiently, was not entitled to file mandamus or prohibition in the Supreme Court because other relief was still open to him in the tribunals below. That decision has no bearing on the standards for administering state standards of judicial misconduct.

[23] On March 25, 1974, this Court denied certiorari in *Broccolino* v. *Maryland Commission on Judicial Disabilities,* No. 73-431. But the petition in that judicial removal case complained only of the procedure employed before the Commission, and said nothing of the standards employed.

as to what the State commands or forbids"? *Lanzetta* v. *New Jersey,* 306 U.S. 451, 453 (1939). Are the states now free, in ousting their judges from the bench, to ignore the federal due process command that a state "establish minimal guidelines to govern law enforcement"? *Smith* v. *Goguen,* No. 72-1254 (42 Law Week 4393 at 4396, March 25, 1974). Are the states free, in other words, to resolve their judicial misconduct problems "on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application [of judicial removal standards]"? *Grayned* v. *City of Rockford,* 408 U.S. 104, 109 (1972).

2. The Two California Judicial Misconduct Standards, on Their Face and as Applied, Present Substantial Vagueness Problems Under the Federal Due Process Clause.

Out of the opinion below, with its in-depth discussion of the two California standards of judicial misconduct, emerge several factors that justify the grant of certiorari in this case. The substantial nature of the constitutional due process problems are made fully evident from that opinion. Moreover, a dark cloud of confusion and vagueness is cast by the opinion over the scope and applicability of two standards of judicial misconduct that are widely employed throughout the nation. And the court's application of both standards to condemn actions heretofore deemed solely within the realm of judicial power and discretion constitutes a new and dangerous threat to the independence of the judiciary in California and elsewhere.

Such certiorari factors become even more evident when the discussion of these standards in the opinion below is read against the backdrop of the *Grayned* trilogy of constitutional values that are said to be of-

fended by any vague state law or standard of conduct. *Grayned* v. *City of Rockford,* 408 U.S. 104, 108-109 (1972). Those values, said the Court, are:

(a) The freedom of man to steer between lawful and unlawful conduct. That value is offended by laws that give a person no reasonable notice or opportunity to know what is prohibited, so that he may act accordingly.

(b) The application of laws in a non-arbitrary and non-discriminatory manner. That value is offended when the laws fail to provide "explicit standards" to guide those who must enforce and apply the law, allowing them to resolve what are basically policy matters on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application of the laws.

(c) The uninhibited exercise of basic First Amendment freedoms. That value is offended where a vague statute abuts upon those First Amendment areas, its uncertain meanings causing citizens to steer far wider of the unlawful zone than if the boundaries of that zone were clearly marked.

Viewed against those three constitutional values, the judicial misconduct standards employed by California in this case reveal vagueness problems of a most disturbing nature.

A. The standards as applied to judicial conduct

The core of the decision below is found in its application of the two standards to the judicial action taken by Judge Geiler in replacing public defenders, who refused to accede to their clients' wishes to plead guilty, action which he deemed to be within his power and discretion

and to be in the best interests of those defendants. But in assessing the constitutional propriety of such an application, one must ask the following questions:

(1) Do the phrases "wilful misconduct in office" and "conduct prejudicial to the administration of justice that brings the judicial office into disrepute" provide any meaningful warning or notice, on their face, that erroneous or bad faith execution of judicial power is within their reach? In common judicial parlance, is judicial error equated with judicial misconduct? Or is judicial error, be it egregious or committed in bad faith, to be left to the normal corrective processes of the appellate system? And in answering that latter question, one must note that California jurisprudence does provide full appellate correction of the type of judicial error ascribed to Judge Geiler.[24]

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[24] The California Supreme Court held that Judge Geiler, in ordering a change of defense counsel, violated § 284 of the California Code of Civil Procedure, which has been construed to deprive a trial judge of the power to decree a change of defense counsel without the consent of both the defendant and counsel, or without an application having been made by either the defendant or counsel, after notice from one to the other.

But as indicated in *Smith* v. *Superior Court*, 68 Cal. Rptr. 1, 440 P.2d 65 (1968), and *People* v. *Ward*, 27 Cal. 3d 218, 103 Cal. Rptr. 671 (1972), any judicial action taken in violation of § 284 can be reviewed and corrected on appeal, or by mandamus. The *Ward* decision also indicates that such a judicial error does not always result in a deprivation of a defendant's constitutional right to counsel, or require a reversal. Any such error, moreover, can be waived by a defendant. *Ibid.*

Contrast the conclusion of the Masters, all three of whom were experienced judges in California, with respect to Count Six: "We conclude that Judge Geiler did not violate any statute when he relieved the Deputy Public Defenders in the nine cases, nor is there any analogous precedent or authority to guide a judge faced with the specific problems presented by these nine cases." See p. 40a, *infra*.

(2) If, as the court below held, the "graver" offense of "wilful misconduct in office" means "unjudicial conduct which a judge acting in his judicial capacity commits in bad faith" (see p. 16a, *infra*), has not the second of the *Grayned* trilogy of constitutional values been offended? Does that formulation of the standard mean anything more than that the judicial enforcers of the standard can decree the removal of a judge if they conceive his judicial action to be so "unjudicial" and so much in "bad faith" as to warrant their subjective condemnation? Since what is "unjudicial" and done in "bad faith" is only in the minds of those whose duty it is to assess the judicial action of the accused, are not "the attendant dangers of arbitrary and discriminatory application of the laws" encouraged if not virtually assured? Does the removal process, based on an evaluation of the unjudicial nature of the judicial action in question, merely substitute a subjective and wide-ranging assessment for the objective and narrow assessment that marks the normal appellate review of such action?

If those questions are answered in the affirmative, then truly the ruling below constitutes a most serious threat to the independence of the judiciary. Judicial freedom is properly circumscribed only by the judge's own sense of judicial values and by the potential of objective review and correction by appellate authority. But to subject the judicial function to *ad hoc* subjective review, accompanied by the threat of censure or removal, is to intimidate all judges toward conformity, and to make them fearful to exercise all the judicial freedom that may rightfully be theirs, controversial though it may be. To borrow Mr. Justice Black's dissenting words in *Chandler* v. *Judicial Council*, 398 U.S. 74, 143 (1970), unless such subjective review is "in

some way repudiated, the hope for an independent judiciary will prove to have been no more than an evanescent dream."

(3) To the extent that the court below has applied both standards to Judge Geiler's judicial conduct involved in Count Six, have not the confusion and vagueness been exascerbated? How can the same judicial action be labeled "in bad faith" under the "graver" standard of "wilful misconduct," while being described (see p. 16a, *infra*) as undertaken "in good faith" for purposes of the "lesser included offense" of conduct prejudicial to the administration of justice?

(4) To the extent that Judge Geiler's "bad faith," under the "graver" offense, has been described as, (a) a "disregard for the statutory and constitutional rules by which a society of millions and a heritage of centuries have sought to preserve fundamental fairness," (b) "directed toward our legal system itself," and (c) smacking of "an inquisitorial intent to serve imagined truth at the expense of justice" (see pp. 19a-20a, *infra*), has the court below expanded the "bad faith" part of the "graver" standard beyond the horizons of due process notice requirements? How can any judge be advised to tailor his judicial activities so as to avoid disregarding the governing rules "of a society of millions"? What badge of faith must he assume to avoid offending "our legal system itself"?

B. The standards as applied to personal conduct

Out of the original 22 charges of personal misconduct, only eight survived the prosecutors' burden of proof. See chart on page 11, *supra*. Those eight charges, of course, are of a highly prejudicial and shocking

nature, being particularly embarrassing to the petitioner as his protestations of innocence were ignored. But the sole problem now is the extent to which either or both of the California standards of judicial misconduct gave any forewarning that such conduct might come within their ambit. The substantiality of that constitutional problem is revealed by the following questions:

(1) Is not the vague thrust of the two standards indicated by their inconsistent application by the three enforcing agencies below to five of the eight personal misconduct charges? Does not such inconsistency reflect the highly subjective and *ad hoc* nature of those standards? In answering these questions, one must first observe the following crazy-quilt treatment of the five charges:

(a) Count One-A, the so-called "dildo" incident, was found by the Masters not to be condemned by either standard. The Commission, viewing the same facts, found that Judge Geiler had violated both standards. Yet the Supreme Court concluded that the incident was condemned only under the "graver" or "wilful misconduct" standard.

(b) Counts Three-B and Three-C, involving obscene remarks to the female law clerk, were not found in the Masters' minds to be violative of either standard. Yet the Commission and the Supreme Court readily found a violation of the "lesser" standard of "conduct prejudicial to the administration of justice."

(c) Counts Three-D and Three-G, involving obscene remarks to female court personnel, were thought by the Masters and the Commission to show violations

of the "lesser" standard. Not so, said the Supreme Court. Those incidents were thought by the court to constitute "wilful misconduct."

(2) Is not the vague nature of these two standards further demonstrated by their totally inconsistent application to five personal misconduct charges that involved substantially identical facts? Counts Three-A, Three-B and Three-C all alleged that obscene remarks were made outside the courtroom to female court personnel, and all were found by the Supreme Court to involve violations of the lesser "prejudicial conduct" standard. Yet, without explanation, the Supreme Court applied the graver "wilful misconduct" standard, with all its bad faith connotations, to precisely the same type of alleged utterances to female court personnel that constituted Charges Three-D and Three-H. How can such differing treatment be explained other than through the *ad hoc* and subjective reactions of the Supreme Court enforcers, reactions that can and apparently do differ even as among identical fact situations?

(3) The ultimate question that tests the vagueness of these standards, as applied to Judge Geiler's alleged conduct and utterances off the bench, is whether and to what extent these standards forewarn a judge as to what personal off-the-bench conduct may warrant censure or removal. Has a judge, upon reading the words "wilful misconduct" or "personal misconduct," been told that he dare not exercise outside the courtroom the full panoply of his First Amendment rights? Has he been told that he dare not, on pain of censure or removal, utilize what others may consider "vulgar and even profane language," language that he himself has no reason to believe "would be offensive or in any way

disruptive of courtroom decorum"? See concurring opinion of Mr. Justice Powell in *Eaton* v. *City of Tulsa* No. 73-5925 (42 Law Week 3538, March 25, 1974).[25]

If judicial misconduct standards are to be used to impinge upon the privacy of a judge's off-the-bench speech or conduct, it would appear constitutionally requisite that the standards themselves be narrowly and precisely drawn to accomplish that purpose, in a manner that does not invade or chill constitutionally protected acts, speech or privacy. See *Gooding* v. *Wilson,* 405 U.S. 518, 522 (1972). Felix Frankfurter once wrote that a man does not cease to be himself, nor does he change his character, when he dons a judicial gown. By the same token, a man should not be deemed to lose his right, upon ascending the bench, to speak candidly and perhaps even vulgarly when off-the-bench circumstances reasonably so warrant. But at least if that freedom is to be validly circumscribed in the name of judicial ethics, the circumscribing should be in precise and unmistakable language.[26]

In sum, it appears that the constitutional vice of the two California judicial misconduct standards is that the discretion of defining their intrusion into the private utterances and off-the-bench conduct of judges is left

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[25] Mr. Justice Powell further noted in that concurrence that "[l]anguage likely to offend the sensibility of some listeners is now fairly commonplace in many social gatherings as well as in public performances."

[26] It has been suggested that, as a general rule, "the more closely related misconduct is to the judicial function, the less specific need be the standards." Note, 84 Harv. L. Rev. 1002, 1008 (1971). Conversely, the further removed the misconduct is from the judicial function, and the more personal or non-judicial is the off-the-bench misconduct, the more specific should be the standards.

to the judicial enforcers of those standards. Cf. *Barsky* v. *Board of Regents*, 347 U.S. 442, 448 (1954). The enforcers thus must do more than match the measure of discipline to the specific case. They must also make their own *ad hoc* and subjective evaluations of what intrusions shall be made in the name of "wilful misconduct" or "prejudicial conduct." Such evaluations are what the Due Process Clause was designed to preclude.

CONCLUSION

For these various reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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Counsel for Petitioner

April 12, 1974

APPENDIX

L.A. No. 30058

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

GEILER

v.

THE COMMISSION ON JUDICIAL QUALIFICATIONS

Petition for rehearing DENIED.

/s/ WRIGHT
Chief Justice

[Supreme Court—Filed Nov. 15, 1973,
G. E. Bishel, Clerk]

[Filed October 25, 1973]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

L.A. 30058

LELAND W. GEILER, a Judge of the Municipal Court,
Petitioner,

v.

THE COMMISSION ON JUDICIAL QUALIFICATIONS,
Respondent.

BY THE COURT

Petitioner was appointed a judge of the Municipal Court for the Los Angeles Judicial District of Los Angeles County on December 30, 1966. On March 26, 1971, the Commission

on Judicial Qualfiications [1] resolved on its own motion pursuant to rule 904 of the California Rules of Court [2] to con-

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[1] The California Constitution, article VI, section 8, provides in pertinent part:

"The Commission on Judicial Qualifications consists of 2 judges of courts of appeal, 2 judges of superior courts, and one judge of a municipal court, each appointed by the Supreme Court; 2 members of the State Bar who have practiced law in the State for 10 years, appointed by its governing body; and 2 citizens who are not judges, retired judges, or members of the State Bar, appointed by the Governor and approved by the Senate, a majority of the membership concurring. All terms are 4 years."

Article VI, section 18, subdivision (c), of the California Constitution provides:

"On recommendation of the Commission on Judicial Qualifications the Supreme Court may (1) retire a judge for disability that seriously interferes with the performance of his duties and is or is likely to become permanent, and (2) censure or remove a judge for action occurring not more than 6 years prior to the commencement of his current term that constitutes wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute."

Subdivision (e) of the same section provides:

"The Judicial Council [see Cal. Const., art. VI, § 6] shall make rules implementing this section and providing for confidentiality of proceedings." These are rules 901-921 of the California Rules of Court.

[2] All references herein to specific rules are to the California Rules of Court.

"Rule 904. Preliminary Investigation.

"(a) The Commission, upon receiving a verified statement, not obviously unfounded or frivolous, alleging facts indicating that a judge is guilty of wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or that he has a disability that seriously interferes with the performance of his duties and is or is likely to become permanent, *shall make a preliminary investigation* to determine whether formal proceedings should be instituted or a hearing held. The Commission without receiving a verified statement *may make* such a preliminary investigation on its own motion."

duct a preliminary investigation of the judicial conduct of petitioner. Pursuant to rule 905 the Commission filed a notice of formal proceedings herein on January 21, 1972. The Commission requested this court by resolution of February 11, 1972, to appoint three special masters for the taking of evidence, as authorized by rule 907. By order filed March 7, 1972, this court appointed three special masters to hear and take evidence in this matter and to report thereon to the Commission.[3]

After a hearing which consumed 21 court days the masters rendered their report on July 5, 1972. The Commission had set forth in the six counts of its notice of formal proceedings 23 specifications of wilful misconduct in office and conduct prejudicial to the administration of justice. The masters found that petitioner had, as charged in five of these specifications, been guilty of conduct prejudicial to the administration of justice which brought the judicial office into disrepute. As to the remaining specifications the masters concluded that petitioner was not guilty of wilful misconduct in office or conduct prejudicial to the administration of justice. The masters unanimously recommended that petitioner "be censured for the following reasons: [¶] 1. Indiscreet use of vulgar, unjudicial and inappropriate language directed toward court attaches and lawyers. [¶] 2. His crude and offensive conduct in public places."

Both petitioner and the examiners filed objections to the report of the masters pursuant to rule 913.[4] After the

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[3] We appointed Arthur L. Alarcon, Judge of the Superior Court of the County of Los Angeles (presiding master); D. Sterry Fagan, Judge of the Superior Court of the County of Los Angeles; and Peter S. Smith, Judge of the Municipal Court for the Alhambra Judicial District of Los Angeles County who, before hearings began was elevated to the Superior Court of the County of Los Angeles.

[4] The Commission designated two deputy attorneys general as examiners "to gather and present evidence before the masters or Commission with respect to the charges against a judge." (Rule 921(f).) The same deputy attorneys general argued the cause for the Commission before this court.

Commission had itself heard oral argument in accordance with rule 914, and following each member's consideration of the evidence adduced before the masters and the objections filed to the masters' findings thereon, the Commission issued its own unanimous findings of fact and conclusions of law. In addition to the five specifications upon which the masters had found petitioner guilty of misconduct, the Commission also found petitioner guilty of conduct prejudicial to the administration of justice as charged in four other specifications. In relation to the remaining fourteen specifications the Commission concluded that the charges were either unproved or did not warrant discipline. The Commission thereupon recommended to this court, pursuant to rule 917 and article VI, section 18 of the California Constitution (see fn. 1, supra), that petitioner be removed from office. The recommendation of removal was approved by seven members of the Commission. The two remaining members of the Commission voted to recommend censure rather than removal of petitioner.

We granted a writ of review to examine the Commission's findings of fact, conclusions of law, and recommendation of removal.[5] (See rule 920.) After reviewing the entire record, we adopt the recommendation of the Commission.

In reviewing the Commission's recommendation, we must address ourselves to the issue of the quantum of proof ap-

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[5] Although a recommendation of censure or removal by the Commission on Judicial Qualifications is not self-effectuating, the Commission does possess fact-finding and recommandatory powers which represent an allocation of judicial functions to the Commission by the Constitution. Thus when we receive a petition challenging the recommendation of the Commission, we deem it proper to treat it as a petition for a writ of review. (Code. Civ. Proc., § 1067.) Code of Civil Procedure section 1068 provides: "A writ of review may be granted . . . when an inferior tribunal, board, or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board, or officer, and there is no appeal, nor, in the judgment of the court, any plain, speedy, and adequate remedy."

plicable to an inquiry concerning a judge. We believe the burden of proof imposed upon the examiners in such an inquiry should be analogous to that employed in State Bar disciplinary proceedings, wherein we require that charges of misconduct "be sustained by convincing proof and to a reasonable certainty and any reasonable doubts should be resolved in favor of the accused." (Moore v. State Bar (1964) 62 Cal.2d 74, 79.) We accordingly declare the standard of proof in such an inquiry before the Commission to be proof by clear and convincing evidence sufficient to sustain a charge to a reasonable certainty. (Cf. Medoff v. State Bar (1969) 71 Cal.2d 535, 550.)

The Commission, not the masters, is vested by the Constitution with the ultimate power to recommend to this court the censure, removal or retirement of a judge. Thus the Commission is free to disregard the report of the masters and may prepare its own findings of fact and consequent conclusions of law. The Commission must, however, apply the "clear and convincing evidence" standard of proof in its independent evaluation of the evidence adduced before the masters. Moreover, "[s]ince it is difficult to pass upon the weight to be given the testimony of a witness when only the written record is before a reviewing body," the Commission may properly "give great weight to the action of the [special masters]," who, having heard the presentation of evidence were "in a better position than the [Commission] to pass upon the truthfulness of the testimony." (McKinney v. State Bar (1964) 62 Cal.2d 194, 196.)

We must also decide the appropriate standard for this court to employ in reviewing a recommendation by the Commission. Were this recommendation of independent force and effect absent further action by this court, our review of the evidentiary basis for that recommendation might properly be limited to a determination whether the Commission's findings of fact were supported by substantial evidence. Under such a standard of review, we would

not be free to disregard the Commission's findings merely because the circumstances involved might also be reasonably reconciled with contrary findings of fact. (Cf. People v. Mosher (1969) 1 Cal.3d 379, 395.) Procedures in State Bar matters offer an alternative standard—an independent review of the record by this court. However, the power to retire a judge for disability or to censure or remove a judge for misconduct is, of course, contingent on the Commission having so recommended (Cal. Const., art. VI, § 18), and is therefore more limited than our power to commence proceedings on our own motion to disbar or suspend an attorney. (See Bus. & Prof. Code, § 6107; In re Hallinan (1954) 43 Cal.2d 243, 253-254.) Nevertheless, since the ultimate, dispositive decision to censure or remove a judge has been entrusted to this court, we conclude that in exercising that authority and in meeting our responsibility we must make our own, independent evaluation of the record evidence adduced below. After conducting such a review we may then decide as a question of law whether certain conduct, which we may have found as a fact to have occurred, was "wilful misconduct in office" or "conduct prejudicial to the administration of justice that brings the judicial office into disrepute." (Cal. Const., art. VI, § 18.) Finally, it is to be our findings of fact and conclusions of law, upon which we are to make our determination of the ultimate action to be taken, to wit, whether we should dismiss the proceedings or order the judge concerned censured or removed from office.

Having clarified what we consider to be the proper institutional role of this court vis-a-vis the Commission and the special masters in an inquiry, we turn to the instant proceeding. It should be noted initially that the masters did apply the proper standard of proof in preparing their findings of fact. The masters' formal findings contain four separate references to a "clear and convincing evidence" standard of proof in holding certain allegations not to have been proven.

Although its conclusions of law differed, the Commission's findings of fact paralleled the masters' findings. The Commission adopted as its own all but a few words of the masters' findings relative to the first five counts of the notice of formal proceedings, containing 22 of the 23 specifications of misconduct by petitioner. Where the Commission's findings in regard to these specifications did differ from the masters', they reflected the Commission's quite proper determination to focus on an *objective* appraisal of petitioner's conduct in terms of the effect of such conduct on the administration of justice. The masters were more concerned with the *subjective* motivations of petitioner in engaging in specified conduct, and with the *subjective* appraisal of his motivations by the persons directly affected by the specified conduct. It should be emphasized that there were no significant differences in the Commission's and the masters' determinations of whether or not the conduct alleged to have occurred in the 23 specifications did in fact occur. In no instance did the Commission find to have occurred conduct alleged in a particular specification, which allegation that masters had previously found not proven.

The specifications found by the Commission to have been proven other than that of count six generally concerned crude behavior and vulgar language which petitioner used in dealing with various professional associates, employees and officers of the court. Petitioner was found to have prodded a deputy public defender with a "dildo" during a conference in chambers one morning, and later that day to have referred to this incident twice in open court so as to curtail the victim's cross-examination of two witnesses. Petitioner was found to have approached a court commissioner from behind in a public corridor of the hall of justice and to have grabbed this victim's testicles. Petitioner was found on two occasions to have made lustful references to his female clerk, once while in chambers in the presence of a group of professional associates. Petitioner was found to have habitually used vulgar and profane language in his

conversations with this clerk, and on two occasions to have used profane terms of personal abuse in reprimanding her and another woman employed by the court. Petitioner was also found to have invited two female attorneys into his chambers wherein he discoursed on the salacious nature of the evidence adduced in criminal cases concerning homosexual acts and rape, punctuating his commentary with profane terms for bodily functions.[6]

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[6] The Commission's findings as to all specifications determined by the Commission to have been proven other than the specification of count six(see fn. 7, *infra*) are as follows:

"FINDINGS

"1. Respondent is and since December 30, 1966, has been a judge of Municipal Court of the Los Angeles Judicial District.

"FINDINGS (*Count One A*)

"2. On the morning of January 29, 1971, Deputy District Attorney G. and Deputy Public Defender David E. were invited into Judge Geiler's chambers by the clerk, Burt Martinez. After Mr. G. and Mr. E. had entered chambers Judge Geiler appeared from the vicinity of the filing cabinet holding a battery-operated object resembling a penis and sometimes referred to as a 'dildo.'

"The object was thrust by Judge Geiler into the area of Mr. E.'s buttocks touching his body. Mr. E. joined the others in Judge Geiler's chambers in general laughter concerning this incident.

"In the morning session on that same date following the above incident and during the course of the preliminary hearing in *People* v. *Hall*, A-172,876 (Exh. 3), Judge Geiler interrupted cross-examination by Mr. E. as follows:

'MR. E: One or two more questions, your Honor, then I won't take any more of your time on this case.

'THE COURT: Get the machine out.

'THE CLERK: The battery?

'THE COURT: The battery.

'MR. E: I have no further questions, your Honor.'

"In the afternoon session during the preliminary hearing in *People* v. *Parks*, A-268-529 (Exh. 4), after an objection by Deputy District Attorney G. to a question by Deputy Public Defender David E., the following occurred:

'THE COURT: It's immaterial whether it was or it wasn't. He's

not charged with anything earlier in the morning at 7:00 o'clock.

'Goes to good faith. Suppose it wasn't.

'It had been but it turned out that he had the thief. Ha, ha, ha. Shove it. That's what you're thinking about. You're convincing me more every moment.

'Did you get those batteries?

'THE CLERK: I'm charging it up. I've got a bigger one. Fifteen volts.

THE COURT: David, we've got a fifteen-volter in there now.

'THE CLERK: With a longer handle.

'THE COURT: Hurry, David. We got a fifteen-volt battery for you.

'MR. E.: Okay. We're referring to that incident this morning, your Honor?

'THE COURT: No, the one that you're going to take home tonight.

'Go ahead.

'MR. E: I have no further questions of this officer, your Honor.'

"The above-quoted remarks of Judge Geiler were intended to and did have the effect of curtailing defense cross-examination during the Hall and Parks matters by means of implied threats of embarrassment and ridicule to Deputy Public Defender E.

". . . "FINDINGS (*Count One B*)

"3. In the fall of 1970, Mr. M., a traffic commissioner, was engaged in a conversation in a hallway on the seventh floor of the Hall of Justice. Judge Geiler approached Commissioner M. from behind, reached under his crotch, and grabbed him by the testicles, causing commissioner M. so much pain that he almost passed out. Nevertheless, Commissioner M. considered the conduct to be friendly horseplay.

". . . "FINDINGS (*Count Three A*)

"4. In the summer of 1969, at a time when five to six men were in Judge Geiler's chambers, Mrs. P., his court clerk, entered the Judge's chambers at his request. Shortly thereafter she left. As she was leaving, Judge Geiler stated, 'How would you like to eat that?' His question referred to Mrs. P. This comment was a crude effort at humor and part of an established course of conduct.

". . . "FINDINGS (*Count Three B*)

"5. On occasions during the early part of 1970, Judge Geiler telephoned his clerk, Mrs. P., and gave her the following instruction with reference to the cases and persons in his courtroom: 'Get the mother fuckers ready. I will be there shortly.' This

type of language was typical of the vocabulary utilized in their conversations.

". . . "FINDINGS (*Count Three C*)

"6. In the early part of 1970, Judge Geiler occasionally asked Mrs. P., 'Did you get any last night?' This comment was a crude effort at humor and part of an established course of conduct.

". . . "FINDINGS (*Count Three D*)

"7. In March of 1970 on an occasion when Mrs. P. returned to court late from her lunch, Judge Geiler told her that she was 'nothing but a fucking clerk' and that she was to do exactly as she was told.

". . . "FINDINGS (*Count Three G*)

"8. On November 10, 1970, Judge Geiler, while in the office of Mrs. E., the calendar court coordinator for the municipal court, used the following language in reprimanding Mrs. E: 'son-of-a-bitch,' 'bitch,' and 'fucking clerk.' Judge Geiler also stated, 'No fucking clerk is going to keep time on me' or 'keep track of me,' and 'Don't you ever forget that you are just a fucking clerk.'

". . . "FINDINGS (*Count Three H*)

"9. Judge Geiler was introduced to a female attorney, Mrs. C. at a Christmas party at the office of Mr. F., also an attorney. On that occasion, outside Mrs. C.'s presence, Mr. F. asked Judge Geiler to help Mrs. C. in criminal matters because of her inexperience.

"On March 17, 1971, Mrs. C. appeared in Judge Geiler's court to conduct a preliminary hearing. Mrs. W., another female attorney, sat at the counsel table with her throughout the preliminary hearing. Upon the completion of that matter Judge Geiler invited Mrs. W. and Mrs. C. into chambers to discuss the handling of preliminary hearings.

"Judge Geiler spoke of the importance of the religion of judges in predicting how they will rule on a matter. However, the major part of the Judge's conversation, a monologue which lasted approximately ten to twenty minutes, was rambling and disjointed. The only thread tying the conversation together was the theme of sex. For example, Judge Geiler told of a gang-rape by 'hot-blooded' Mexicans and of a judge who had vomited upon surreptitiously witnessing a homosexual act in the lavatory at the May Company. Judge Geiler also discussed other homosexual acts and degrees of penetration in rape cases, all with apparent relish at the salacious nature of the subject matter. He used 'street language' such as, 'shit' and 'fuck,' in discussing cases. . . ."

The only substantive difference between the master's and the Commission's findings arose in relation to count six, which set forth the 23d and final specification of misconduct in the original notice. Count six charged: "In nine preliminary hearings, you have arbitrarily and capriciously relieved the public defender and appointed private counsel. . . . In none of these nine cases was there an assertion of a conflict of interest." The findings of the Commission as to count six are set out in the margin.[7]

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[7] "In the nine preliminary hearings specified in COUNT SIX of the Notice of Formal Proceedings the Public Defender was relieved as counsel. The respective defendants were eligible for representation by the Public Defender and the Public Defender's office was willing to represent and was appearing for each defendant. In the eight escape cases, Judge Geiler made a preliminary statement from the bench regarding his sentencing policy on escape cases where there was no evidence of violence or damage to property.

"In each case the defendant advised the court of his desire to plead guilty to a misdemeanor, but the Public Defender refused to plead the defendant guilty for the following reasons:

"(1) *Hakes*—The Public Defender wanted to consolidate this matter with other pending superior court cases so that defendant might spend less time in jail.

"(2) *Cole*—no statement was made to show any reason for the Public Defender's reluctance.

"(3) *Dominguez*—Uncertainty as to the effect of a guilty plea on defendant's parole status.

"(4) *Marquardt*—Refusal of Judge Geiler to make a record of the plea bargain.

"(5) *Oderda*—Uncertainty as to the effect of a guilty plea on defendant's parole status.

"(6) *Saldate*—The records of the proceedings before Judge Geiler do not reflect whether the Public Defender made any statement as to whether or not Saldate would plead guilty or the reasons why he should not do so, nor whether an opportunity was afforded to express the Public Defender's position.

"(7) *Ramirez*—The Public Defender and the District Attorney agreed to a lesser sentence because of mitigating circumstances.

The Commission's findings as to count six are substantially identical to those of the masters save for the final

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Judge Geiler refused but subsequently acceded to the same sentence after the substitution of private counsel.

"(8) *Deever*—Refusal of Judge Geiler to make a record of the plea bargain.

"(9) *Ricketts*—Judge Geiler refused to give the Public Defender additional time to research a possible defense suggested by the defendant.

"There was no evidence to show that there was a conflict of interest between the public defender and the defendants.

"In each case, private counsel was appointed at the request of the defendant for the purpose of the plea only and without compensation. Thereafter, each defendant entered a guilty plea in compliance with 'IN RE TAHL.'

"After the pleas, the defendants in the escape cases received sentences ranging from 10 to 45 days in county jail, consecutive. Defendant Dominguez pleaded guilty to misdemeanor possession of marijuana and was placed on probation and fined $100. No evidence was offered to show that any of the defendants were innocent of the charges.

"Judge Geiler had a hostile attitude and bias toward members of the Public Defender's office. As a result, some members of the Public Defender's office were hostile towards Judge Geiler. Since 1970 the Public Defender's office has attempted to limit the tour of duty of the Deputy Public Defenders assigned to Judge Geiler's court to a period of one week. Four of the five Deputy Public Defenders who testified regarding their being relieved as counsel by Judge Geiler had been admitted to practice law for periods of time ranging from two to four months at that time.

"Deputy Public Defenders were required by office policy to obtain approval from a supervisor before pleading a defendant guilty to a misdemeanor at the time of a preliminary hearing in any municipal court. In eight of the foregoing cases, the Deputy Public Defender had a valid reason for refusing to accede to Judge Geiler's desire for an immediate guilty plea. However, because of Judge Geiler's preconceived bias against Deputy Public Defenders and his professed desire to expedite the administration of justice even at the expense of defendants' constitutional rights, Judge Geiler initiated and carried out the foregoing substitutions of counsel."

two paragraphs. The masters had found mutual hostility between petitioner and the public defender's office; the Commission found petitioner responsible for this hostile relationship. The Commission additionally found that petitioner's substitutions of counsel were the direct result of petitioner's hostile attitude toward deputy public defenders.

We have made a detailed review of the full record and independently find upon clear and convincing evidence in accord with the findings of the Commission, including the findings as to the specification of count six. We adopt the Commission findings as our own.

The Commission concluded on its findings that each of the proven specifications involved conduct constituting "wilful misconduct in office" and "conduct prejudicial to the administration of justice that brings the judicial office into disrepute." With the qualifications subsequently noted, we reach similar conclusions.

The ultimate standard for judicial conduct must be conduct which constantly reaffirms fitness for the high responsibilities of judicial office. It is immaterial that the conduct concerned was probably lawful, albeit unjudicial, or that petitioner may have perceived his offensive and harassing conduct as low-humored horseplay.

The first two canons of the Code of Judicial Conduct proposed in 1972 by the American Bar Association's Special Committee on Standards of Judicial Conduct emphasize the importance of appraising alleged judicial misconduct objectively rather than subjectively. Canon One declares: "a judge should uphold the integrity and independence of the judiciary." The accompanying text adds: "A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved." Canon Two speaks for itself: "A judge should avoid impropriety and *the appearance of impropriety* in *all* his activities." (Italics added.)

The preface to the proposed Code of Judicial Conduct concludes: "The canons and text establish mandatory standards unless otherwise indicated. It is hoped that all jurisdictions will adopt this Code and establish effective disciplinary procedures for its enforcement." California is fortunate in that it need not formally adopt the proposed code in order to hold its judiciary to the high standard of conduct the public and the bar are entitled to expect of the judicial branch of government.

The Commission on Judicial Qualifications was created by constitutional amendment in 1960, when new section 10b was added to article VI. The proposition establishing the Commission found its way to the ballot in response to a demonstrated need to insure that those who sit in judgment in this state are both fit and able to discharge their responsibilities. One of the most dedicated and persuasive proponents of the Commission was Chief Justice Phil S. Gibson of this court.[8]

We had eariler held that the State Bar lacked jurisdiction over judges. (State Bar of California v. Superior Court (1929) 207 Cal. 323.) Due to the unwieldiness of legislative impeachment as a means of imposing judicial discipline, the bar of this state had been held to a higher standard of conduct than the bench—in reverse of the dictates of common sense and sound legal policy. The Commission provided an innovative and effective alternative to the impeachment process.

Although formal proceedings of the Commission have been few, the potentiality of such proceedings has proven to be the vital element of the Commission's efficacy. Each year since the establishment of the Commission the possi-

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[8] See Gibson, *For Modern Courts* (1957) 32 State Bar J. 727, 733-735. See generally Frankel, *Judicial Conduct and Removal of Judges for Cause in California* (1962) 36 So.Cal.L.Rev. 72; Frankel, *Removal of Judges: California Tackles an Old Problem* (1963) 49 A.B.A.J. 166.

bility of an inquiry and ultimately removal from office has led several unfit or disabled judges to remove themselves from the active ranks of the judiciary. In contrast to the low profile of most of its work, the California Commission on Judicial Qualifications, the first such commission created in the United States, has itself been much publicized as a model for other states anxious to share California's reputation for an outstanding judicial system.[9]

This court has considered disciplinary recommendations from the Commission on only five prior occasions. In the first instance, the Commission recommended removal. Without commenting on the validity of the Commission's findings of fact, we rejected the recommendation of removal of the judge concerned. (Stevens v. Commission on Judicial Qualifications (1964) 61 Cal.2d 886.) At that time, however, our Constitution (art. VI, § 10b) authorized removal as the sole disciplinary measure, and limited the grounds for imposing discipline on a judge to "willful misconduct in office or willful and persistent failure to perform his duties or habitual intemperance."[10]

In 1966 a second constitutional amendment concerning the Commission on Judicial Qualifications repealed section 10b and added new section 18 to article VI (see fn. 1, supra), thereby broadening the grounds for removal of a judge and adding the intermediate disciplinary option of

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[9] Chief Justice Roger J. Traynor stated in an address to the Virginia State Bar Association: "When a bench can quit itself of a burdensome member through such a commission, it gains as much as the Bar and the public. It reaps added benefits from each judge's quickened awareness that he must meet reasonable standards of competence and behavior in relation to his office." Traynor, *Who Can Best Judge the Judges?* (1967) 42 State Bar J. 225, 239. See also A.B.A., The Improvement of the Administration of Justice (5th ed., 1971) at pp. 57-58; Frankel, *Judicial Ethics and Discipline for the 1970s* (1970) 54 Judicature 18.

[10] See Frankel, *Judicial Discipline and Removal* (1966) 44 Tex. L. Rev. 1117, 1129-1130.

public censure. Since 1966 this court has on four occasions adopted the recommendation of the Commission that a judge be publicly censured for "conduct prejudicial to the administration of justice that brings the judicial office into disrepute." (In re Chavez (1973) 9 Cal.3d 846; In re Sanchez (1973) 9 Cal.3d 844; In re Glickfeld (1971) 3 Cal.3d 891; In re Chargin (1970) 2 Cal.3d 617.)

As indicated above, the Commission in the instant matter concluded that the conduct proven in the previously discussed specifications constituted "wilful misconduct in office" and "conduct prejudicial to the administration of justice that brings the judicial office into disrepute." As we have noted above, the second ground for imposing discipline was added to the Constitution in 1966. We believe this mandates our construing "wilful misconduct in office" as connoting something graver than the "lesser included offense" of "conduct prejudicial to the administration of justice that brings the judicial office into disrepute." The more serious charge should be reserved for unjudicial conduct which a judge acting in his judicial capacity commits in bad faith, while the lesser charge should be applied to conduct which a judge undertakes in good faith but which nevertheless would appear to an objective observer to be not only unjudicial conduct but conduct prejudicial to public esteem for the judicial office.[11]

Viewed in this light, we conclude that the following specifications of petitioner's vulgar and profane conduct con-

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[11] The lesser charge of "conduct prejudicial to the administration of justice that brings the judicial office into disrepute" would also apply to wilful misconduct out of office, i.e. unjudicial conduct committed in bad faith by a judge not then acting in a judicial capacity. It should be emphasized that our characterization of one ground for imposing discipline as more or less serious than the other does not imply that in a given case we would regard the ultimate sanction of removal as unjustified solely for "conduct prejudicial to the administration of justice which brings the judicial office into disrepute."

stituted "wilful misconduct in office:" petitioner's brandishing of the "dildo" and petitioner's subsequent remarks, found by the Commission to have been made with the intent of curtailing cross-examination by the victim, and petitioner's profane and abusive reprimanding of two court employees. We consider the remaining proven instances of petitioner's vulgar conduct to have been "conduct prejudicial to the administration of justice that brings the judicial office into disrepute."

Turning to the final specification of misconduct embodied in count six, we regard the Commission's conclusions [12] to the worthy of incorporation in this opinion:

"We conclude that Judge Geiler violated Code of Civil Procedure section 284 when he relieved the Deputy Public Defenders in the eight cases (excluding *Cole*). While legal precedent in this area is scant, any excuse for Judge Geiler's noncompliance with Code of Civil Procedure section 284 was precluded by the fact that he did not act in good faith. Judge Geiler interfered with the attorney-client relationship between the public defenders and their clients. All of the cases were the type which probably would have become misdemeanors by sentence had the defendants been held to answer and pleaded guilty or been convicted in the superior court. In these cases, no actual prejudice was suffered by any of the defendants. Nevertheless, Judge Geiler's bad faith interference with the attorney-client relationship in violation of Code of Civil Procedure section 284 constituted conduct prejudicial to the administration of justice and wilful misconduct in office.

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[12] It is significant that all nine members of the Commission concurred in these conclusions. All the findings of fact of the Commission, and all the conclusions of law relative to each proven specification of misconduct were adopted by unanimous resolution. The only non-unanimous act of the Commission was its recommendation of removal, for which seven members of the Commission voted. Two members of the Commission voted to recommend censure.

"During the last few years there has been great public concern over the problem of trial court delay and congestion. It may be argued that Judge Geiler was attempting to respond to this crisis in the court system by encouraging pleas of guilty in minor cases which would undoubtedly result in a misdemeanor disposition in the superior court. However, a judge must decide each case on its own individual merits. In his misguided attempt to expedite justice, Judge Geiler did not do so. By his own testimony, he had biased preconceptions as to public defender cases. This precluded good faith consideration of each of these eight cases on its own merits.

"Judge Geiler's refusal to permit plea bargains in the *Marquardt* and *Deever* cases to be placed 'on the record' was petty, unreasonable and contrary to the rule set forth in *People* v. *West*. Judge Geiler's refusal to allow the Public Defender in the *Ricketts* case additional time to investigate a possible defense was arbitrary and made in callous disregard of the defendant's interests. Judge Geiler's replacement of the Public Defenders in the *Dominguez* and *Oderda* cases in effect precluded the investigation of possible parole consequences of guilty pleas; as such these actions also were made in callous disregard of the defendants' interests. Judge Geiler's summary dismissal of the Public Defender in the *Saldate* case for no apparent reason and without any discussion whatsoever was arbitrary, unjust, and capricious. In the *Ramirez* case, Judge Geiler's removal of the Public Defender who insisted on a lesser sentence, coupled with the Judge's subsequent imposition of the same sentence, was arbitrary and capricious. Finally in the *Hakes* case, Judge Geiler's removal of the Public Defender prevented the reasonable consolidation of this matter with other pending superior court cases.

"Thus we conclude that the actions of Judge Geiler in these eight cases violated Code of Civil Procedure section 284, interfered with the attorney-client relationship and were made in bad faith.

"The foregoing conduct of Respondent constituted wilful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute."

We agree with the Commission that the conduct charged in count six was not only unjudicial but unlawful as well. (Cf. Smith v. Superior Court (1968) 68 Cal.2d 547.) We also are in accord with the Commission in concluding, contrary to the special masters, that petitioner acted in "bad faith." However, we feel this last conclusion requires elucidation.

By "bad faith," we do not mean to imply that petitioner sought to harm the interests of the defendants involved. Rather, we mean that in indulging his petty animosity toward deputy public defenders, and in culmination of a pervasive course of conduct of overreaching his authority over subordinates, petitioner intentionally committed acts which he knew or should have known were beyond his lawful power. The resulting misconduct entailed the most insidious kind of official lawlessness—disregard for the statutory and constitutional rules by which a society of millions and a heritage of centuries have sought to preserve fundamental fairness within a legal system which cannot escape the inherent imperfections of mankind.

No more fragile rights exist under our law than the rights of the indigent accused; consequently these rights are deserving of the greatest judicial solicitude. The ideal of our legal system is that the judicial should be equated with the just. Such an ideal cannot be achieved if one man clothed with judicial power may ignore with impunity such a basic institutional mandate as the sanctity of the attorney-client relationship merely because the attorneys are young deputy defenders and their clients are indigent.

It is immaterial whether petitioner's abuse of power resulted in just or unjust treatment for any given defendant. It is undisputed that petitioner bore no ill will towards the individual defendants enumerated in count six. Peti-

tioner's bad faith was directed towards our legal system itself; his arbitrary substitutions of counsel because of his personal beliefs as to the defendants' guilt and his personal hostility to their counsel smacks of an inquisitorial intent to serve imagined truth at the expense of justice. Our adversary system of justice and our elaborate procedure for the prosecution of alleged criminals represents an institutional recognition of the fallibility of the individual. Much as our political system apportions power among jealous branches of government, so within the judicial branch we have striven to disperse the functions of the judicial process among many adverse participants in the hope that the institutions of our legal system will bear a collective capacity for justice and righteousness which no single mortal can achieve. It is this commitment to institutional justice which petitioner's individual conduct threatens to corrupt. Risk of recurrence of such conduct cannot be tolerated.

After reviewing the entire record and considering all the facts and circumstances, we have concluded that the recommendation of the Commission should be adopted. We therefore order Judge Leland W. Geiler of the Municipal Court of the Los Angeles Judicial District of Los Angeles County removed from office. This order is final forthwith.[13]

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[13] This is the first instance in which we have removed a judge from office and we do so only after careful consideration of all matters, including the standards of conduct to which members of the judiciary must conform, the nature of our review of proceedings before the masters and the Commission, and the full record of those proceedings as reported to this court. The record discloses that the masters rendered their report 120 days after their appointment. During the hearings, which consumed 21 court days, they heard a total of 73 witnesses whose testimony is reported in 3193 pages of transcript. Thereafter the Commission, after careful deliberations over a 56-day period, made and reported its findings of facts, conclusions of law and recommendations. Both the Commission and this court were required to review the full transcript in performance of their responsibilities to make independent findings on a conflicting factual record.

As indicated above, before the advent of the Commission on Judicial Qualifications the bar of this state was held to a higher standard of conduct than the bench. This anomaly has since been rectified and the reverse is now true. We recognize that petitioner's removal from office is required more by the high standards of judicial office than by his personal failings. Much evidence was adduced before the Commission of petitioner's diligence in the work of the law, and his unjudicial conduct cannot be said to amount to moral turpitude, dishonesty or corruption. (Cf. Bus. & Prof. Code, § 6106.) We therefore further order that despite his removal from judicial office Leland W. Geiler shall if otherwise qualified be permitted to practice law in the State of California. (See Cal. Const., art. VI, § 18, subd. (d).)

STATE OF CALIFORNIA
COMMISSION ON JUDICIAL QUALIFICATIONS

HON. ARTHUR L. ALARCON, PRESIDING SPECIAL MASTER
D. STERRY FAGAN, SPECIAL MASTER
HON. PETER S. SMITH, SPECIAL MASTER

IN RE INQUIRY NUMBER 12

Report of the Masters

July 5, 1972

STATEMENT OF PROCEEDINGS

By order of the Commission on Judicial Qualifications dated January 21, 1972, and pursuant to Rule 905, notice that formal proceedings were to be instituted was issued to Judge Leland W. Geiler advising him of the charges against him and the alleged facts upon which such charges were based. An answer was filed, dated and signed by Judge Leland W. Geiler on February 8, 1972, and served on the Examiner on February 9, 1972, in compliance with Rule 906 in which Judge Geiler denied any misconduct

prejudicial to the administration of justice or which brought his judicial office into disrepute.

On March 7, 1972, pursuant to the request of the Commission, the Supreme Court of the State of California, sitting en banc, appointed the undersigned as special masters.

Hearing was set for May 15, 1972, and on that date, after opening statements, the taking of testimony began. Both sides rested on June 19, 1972. Oral argument was completed, and the matter was submitted June 20, 1972. (See Appendix A for the minutes of the hearing.)

FINDINGS OF FACT AND CONCLUSIONS

Count One

You are charged with two assaults, to wit:

A. On the morning of January 29, 1971, you requested Deputy District Attorney Jay David Gould and Deputy Public Defender David A. Elden to step into your chambers. After Mr. Elden had entered your chambers, you emerged from behind a file cabinet with a battery-operated massager resembling a penis and sometimes referred to as a "dildo." You rammed said object into the rectum of Mr. Elden. Later on that day, in the preliminary hearings of *People* v. *Louis James Hall,* No. A-172,876, and *People* v. *Lawrence B. Parks,* No. A-268,529, you threatened Mr. Elden with other assaults with this same battery-operated massager.

Findings

On the morning of January 29, 1971, Deputy District Attorney Jay D. Gould and Deputy Public Defender David Elden were invited into Judge Geiler's chambers by the Clerk, Burt Martinez. After Mr. Gould and Mr. Elden had entered chambers, Judge Geiler appeared from the vicinity of the filing cabinet holding a battery-operated object resembling a penis and sometimes referred as a "Dildo."

The object was thrust by Judge Geiler into the area of Mr. Elden's buttocks touching his body. Mr. Elden joined the others in Judge Geiler's chambers in general laughter concerning this incident.

In the morning session on that same date following the above incident and during the course of the preliminary hearing in *People* v. *Hall,* A-172,876 (Exh. 3) Judge Geiler interrupted cross-examination by Mr. Elden as follows:

"Mr. Eldon: One or two questions, your Honor, then I won't take any more of your time on this case.

"The Court: Get the machine out.

"The Clerk: The battery?

"The Court: The battery.

"Mr. Eldon: I have no further questions, your Honor."

In the afternoon session during the preliminary hearing in *People* v. *Parks,* A-268,529 (Exh. 4) after an objection by Deputy District Attorney Jay Gould, the follow proceedings occurred:

"The Court: It's immaterial whether it was or it wasn't. He's not charged with anything earlier in the morning at 7:00 o'clock.

"Goes to good faith. Suppose it wasn't. It had been but it turned out that he had the thief. Ha, ha, ha. Shove it. That's what you're thinking about. You're convincing me more every moment.

"Did you get those batteries?

"The Clerk: I'm charging it up. I've got a bigger one. Fifteen volts.

"The Court: David, we've got a fifteen-volter in there now.

"The Clerk: With a longer handle.

"The Court: Hurry, David. We got a fifteen-volt battery for you.

"Mr. Elden: Okay. We're referring to that incident this morning, your Honor?

"The Court: No, the one that you're going to take home tonight.

"Go ahead.

"Mr. Elden: I have no further questions of this officer, your Honor."

The above-quoted remarks of Judge Geiler appeared to be an attempt at humor.

CONCLUSIONS:

Judge Geiler's conduct was an attempt at what he believed to be humorous horseplay. He did not intend an offensive touching nor a civil or criminal assault. His remarks during the *Hall* and *Parks* matters were not a threatened assault.

B. In the fall of 1970, Arland A. Myhrvold, a Court Commissioner, was engaged in a conversation in a crowded hallway in the Hall of Justice. You approached Commissioner Myhrvold from the rear and grabbed him by his testicles, creating a scene.

FINDINGS

In the fall of 1970, Arland A. Myhrvold, a Court Commissioner, was engaged in a conversation in a hallway on the seventh floor of the Hall of Justice. Judge Geiler approached Commissioner Myhrvold from behind and touched him between the legs in a manner commonly referred to as a "Goose." Commissioner Myhrvold considered the conduct to be friendly horseplay. Judge Geiler's conduct did not create a scene.

CONCLUSIONS

Judge Geiler's conduct did not constitute a civil or criminal assault, nor was Commissioner Myhrvold offended by it.

COUNT TWO

You have engaged in a course of conduct in the courthouse involving the subject of sex which brought the judiciary into disrepute, to wit:

A. In the early part of 1970, a group of junior high students came into your court, Division 49 of the Municipal Court of the Los Angeles Judicial District, to observe the judicial process. At that time, a witness was testifying about a "half and half" transaction, meaning half oral copulation and half sexual intercourse. You then went off the record and stated in open court: "For the benefit of the students in the court, the term 'half and half' means 'half fucking and half sucking.'"

FINDINGS

The Examiner failed to establish, in whole or in part, by clear and convincing evidence, any of the facts set forth in Count Two-A.

CONCLUSIONS

Not proved.

B. On or about April 1, 1971, Mrs. Elaine Yvonne Flack, a court reporter, followed you into your chambers at your request. When both of you were inside your chambers, you took off your robe, which revealed that you were without your trousers and only attired in your shorts. You made no explanation or apologies for such behavior.

FINDINGS

On April 1, 1971, Mrs. Elaine Yvonne Flack entered Judge Geiler's chambers to obtain his signature. At that time she saw Judge Geiler in his underweath beneath his unfastened Judicial Robe. She left immediately. Judge Geiler was unaware of her presence

or that he was partially disrobed, nor does he have a conscious memory of the event.

CONCLUSION

The evidence is insufficient to show that Judge Geiler intended to expose himself or to commit any offensive or sexual act.

C. On several occasions in 1970, you requested Deputy Public Defender Warren Soloski to come into your chambers. At such times, you were urinating with the door to the toilet wide open so that you were in full view. You then turned around and exposed your private parts to Mr. Soloski causing him some embarrassment.

FINDINGS

On one occasion, between February and May of 1970, after Deputy Public Defender Warren J. Soloski entered Judge Geiler's Chambers he saw Judge Geiler come out of the toilet holding his penis and walk toward his desk as he zipped himself up. No evidence was offered to show that Mr. Soloski was embarrassed.

CONCLUSIONS

The evidence is insufficient to establish that Judge Geiler intentionally exposed himself.

D. In January of 1970, you stated in open court with reference to the anatomy of a female witness: "She's got a tight ass."

FINDINGS

The Examiner failed to establish, in whole or in part, by clear and convincing evidence, any of the facts set forth in Count Two-D.

CONCLUSION

Not proved.

E. Because of your conduct in the courthouse involving the subject of sex and your courtroom handling of sex cases, both the District Attorney's Office and the Public Defender's Office in Los Angeles County have requested that no cases involving sex be assigned to you.

FINDINGS

Sometime in August 1970, Deputy District Attorney Florence Linn requested on behalf of the District Attorney's office that no cases involving sex be assigned to Judge Geiler because of several complaints received by her for a period of a year from Deputy District Attorneys under her supervision. No evidence was offered to show that the Public Defender's office made a similar request.

CONCLUSION

The facts presented do not establish the specific nature of Judge Geiler's conduct which precipitated the request that sex cases not be assigned to him.

COUNT THREE

You have engaged in a course of conduct of addressing counsel and court attaches in disparaging, vulgar, and unjudicial terms, to wit:

A. In the summer of 1969, you had five males in your chambers. The Court Clerk, Mrs. Michael Provencio, then came into your chambers. As she was leaving, you asked the other five males: "How would you like to eat that?" This question referred to Mrs. Provencio.

FINDINGS

In the summer of 1969, at a time when five to six men were in Judge Geiler's Chambers, Mrs. Michael

Provencio entered the Judge's Chambers at his request. Shortly thereafter she left. As she was leaving, Judge Geiler stated, "How would you like to eat that?" His question referred to Mrs. Michael Provencio. This comment was a crude effort at humor and part of an established course of conduct, to which Mrs. Provencio made no objection until after she was removed from Judge Geiler's Court, nor was sufficient evidence offered to support the conclusion that she was offended thereby.

CONCLUSION

The comment made by Judge Geiler was unjudicial. Judge Geiler did use vulgar and unjudicial language in his conversations with court personnel and Michael Provencio. Some remarks and vulgarity used in the presence of Michael Provencio were undoubtedly provoked by her general demeanor and previous references to her personal sex life. These remarks were made while off the bench and not within the hearing of the public. Judge Geiler regularly used vulgar terms as a part of his vocabulary without intending to offend court personnel nor any awareness that such language may be offensive to them.

B. On several occasions during the early part of 1970, you telephoned Court Clerk, Mrs. Michael Provencio, from your home and gave her the following instructions as to the cases in your court: "Get the mother fuckers ready. I'll be there shortly."

FINDINGS

On occasion during the early part of 1970, Judge Geiler telephoned his Clerk, Mrs. Michael Provencio, and gave her the following instruction with reference to the cases and persons in his courtroom: "Get the

mother fuckers ready. I will be there shortly." This type of language was typical of the vocabulary utilized in their conversations, to which Mrs. Provencio made no objection until after she was removed from Judge Geiler's Court, nor was there sufficient evidence offered to support the conclusion that she was offended thereby.

CONCLUSION

The comment by Judge Geiler was vulgar. The conclusion stated in Paragraph Three-A is equally applicable here and is incorporated herein by reference.

C. In the early part of 1970, you frequently asked Mrs. Provencio, "Did you get any last night?"

FINDINGS

In the early part of 1970, Judge Geiler occasionally asked Mrs. Michael Provencio, "Did you get any last night?" This comment was a crude effort at humor and part of an established course of conduct, to which Mrs. Provencio made no objection until after she was removed from Judge Geiler's Court, nor was there sufficient evidence offered to support the conclusion that she was offended thereby.

CONCLUSION

The comment made by Judge Geiler was unjudicial. The conclusion stated in Paragraph Three-A is equally applicable here and is incorporated herein by reference.

D. In March of 1970, Court Clerk Mrs. Provencio was allegedly late to court from her lunch. At that time you said to her: "You're nothing but a fucking clerk and don't you forget it and you'll do what I tell you and nothing else."

FINDINGS

In March of 1970 on an occasion when Mrs. Michael Provencio returned to court late from her lunch, Judge Geiler told her that she was "nothing but a fucking clerk" and that she was to do exactly as she was told. Mrs. Provencio was offended by the reprimand, but there was insufficient evidence offered to support the conclusion that she was offended by the descriptive adjective.

CONCLUSION

The remarks made by Judge Geiler were disparaging, vulgar and unjudicial. The conclusion stated in Paragraph Three-A is equally applicable here and is incorporated herein by reference. Judge Geiler intended a reprimand without sexual or obscene connotations.

E. In the early part of 1970, you frequently greeted Deputy District Attorney William D. Burns, Jr., in the hallway of the Hall of Justice, with such terms as "Hi, shit head," and "Hi, mother fucker." Sometimes this greeting was voiced quite loudly.

FINDING

No evidence was offered in support of this allegation.

CONCLUSION

Not proved.

F. In February of 1970, Deputy Public Defender Laurence S. Smith was in your court. A marshal escorted a couple of sloppily attired and long-haired prisoners into your court. You then stated: "Oh! Are these Public Defenders?" After Mr. Smith complained about this remark to the presiding judge, the presiding judge then ordered all the remaining preliminary hearings set for that afternoon in your court be assigned to other judges. That afternoon, you badgered and castigated Mr. Smith in public during a preliminary hearing.

FINDINGS

In February of 1970, Judge Geiler stated from the bench "oh, are these the public defenders" at a time when two unkempt and bushy-haired prisoners were brought into the courtroom. Shortly thereafter Deputy Public Defender Laurence S. Smith complained about this remark to Judge Vaino Spencer and as a result one preliminary hearing wherein Mr. Smith was the Attorney of Record was transferred out of Judge Geiler's court. Judge Geiler's remark was an attempted at humor, to which Mr. Smith overreacted. Judge Geiler castigated Mr. Smith publicly later that day concerning this incident.

CONCLUSION

Judge Geiler's remark was not disparaging nor vulgar, because it was said in jest, it cannot be characterized as unjudicial.

G. On November 10, 1970, you came into the office of Mrs. Shirley Mae Estes, who was the Calendar Court Coordinator. Mrs. Estes attempted to explain to you her responsibilities in coordinating the court calendar and the necessity of her monitoring the times of the cases in your court. You became very abusive and shouted obscenities at Mrs. Estes. You concluded by telling her: "And don't you ever forget you're just a fucking clerk."

FINDINGS

On November 10, 1970, Judge Geiler, while in the office of Mrs. Shirley Mae Estes, the calendar court coordinator for the Municipal Court, used the following language in reprimanding Mrs. Estes: "Son-of-a-Bitch," "Bitch," and "Fucking Clerk." Judge Geiler also stated, "No fucking clerk is going to keep time on me" or "Keep track of me," and "Don't you ever forget that you are just a fucking clerk."

CONCLUSION

The language used by Judge Geiler in reprimanding Mrs. Estes was disparaging and vulgar.

H. On March 17, 1971, Mrs. Jeanette Christy was handling a preliminary hearing in your court in the capacity of a private defense attorney. Mrs. Diane Wayne went to your court that morning to meet her friend, Mrs. Christy. During Mrs. Christy's preliminary hearing, you stated that you wanted to see the two women in your chambers after the completion of the preliminary hearing. After the preliminary hearing, the bailiff insisted that the two women go into your chambers. When the two women entered your chambers, you proceeded to give them a few pointers in the handling of sex cases. For the next 45 minutes while other individuals waited in the courtroom, you described some of the sex cases in which you had been involved. The language you used in describing said cases was quite raw and crude.

FINDINGS

Judge Geiler was introduced to Mrs. Christy at a Christmas party at the office of Mr. Richard Fusilier. On that occasion Mr. Fusilier asked Judge Geiler to help Mrs. Christy in criminal matters because of her inexperience.

On March 17, 1971, Mrs. Christy appeared in Judge Geiler's court to conduct a preliminary hearing. Mrs. Wayne sat at the counsel table with her throughout the preliminary hearing. Upon the completion of that matter Judge Geiler invited Mrs. Wayne and Mrs. Christy into chambers to discuss the handling of preliminary hearings. The Judge's conversation, which lasted approximately ten minutes, was rambling and disjointed. For example, Judge Geiler spoke of the importance of the religion of Judges in predicting how they will rule on a matter.

He used "street language" such as, "shit" and "fuck" in discussing cases.

CONCLUSION

Judge Geiler used vulgar and unjudicial language in the presence of Mrs. Christy and Mrs. Wayne.

COUNT FOUR

You have engaged in a course of conduct of addressing members of ethnic minorities in derogatory terms, to wit:

A. The preliminary hearing transcript of *People* v. *Eliazar Pena*, No. A-265886, held on November 25, 1970, discloses that you referred to the defendant as ". . . the funniest Mexican I have seen . . . ."

FINDINGS

During the preliminary hearing in the case of *People* v. *Eliazar Pena*, No. A-265886, the following colloquy occurred:

"The Court: Where were you born?

"The Defendant Pena: Mexico.

"The Court: You look like the funniest Mexican I have seen, and I am part.

"Does he look like me to you?

"The Clerk: No, Your Honor.

"The Court: Besides that, you are an alien, aren't you?

"The Defendant Pena: Yes, sir."

Taken in context this statement was made during an attempt by Judge Geiler to ascertain the ethnic background of the defendant and whether he was an alien in order to fix bail.

CONCLUSION

The remark made by Judge Geiler when taken in context was not derogatory.

B. The preliminary hearing transcript of *People* v. *Leopoldo Cruz, et al.*, No. A-266075, held on November 27, 1970, discloses that you referred three times to the defendants as "wetbacks."

FINDINGS

During the preliminary hearing in the case of *Leopoldo Cruz, et al.* No. A-266075, Judge Geiler used the term "wetback" three times in describing defendants as being illegal aliens from Mexico and in setting forth his analysis as to why the officer was justified in arresting and searching a large group of persons referred to by a witness as "Latins."

CONCLUSION

In context the term "wetback" was not intended by Judge Geiler to be derogatory.

C. In 1970, you referred to Herman Pang, C.S.R., Official Court Reporter of the Municipal Court, Los Angeles Judicial District, as a "chink" in open court.

FINDINGS

No evidence was presented in support of the allegations set forth in Count Four-C.

CONCLUSION

Not Proved.

D. In February of 1970, you called a victim named Monica Sanchez a "fucking . . . fat Mexican Whore."

FINDINGS

The allegations set forth in Count Four-D were not proved by clear and convincing evidence.

CONCLUSION

Not Proved.

COUNT FIVE

You unlawfully ordered the court reporters to delete material from two preliminary hearing transcripts, to wit:

A. In the preliminary hearing of *People* v. *Byron Edward Smith*, No. A-268076, held on January 18, 1971, you noticed that the defendant's mother was present in court and taking notes. You then explosively admonished the defendant's mother relative to her attempting to intimidate the court. This outburst by you caused the defendant's mother to become emotional. At this time, the defendant stood up and stated he did not have to stand for what you were doing. After this, you ordered the defendant to be bound and gagged. Thereupon, Deputy Public Defender Francis X. Maher made several motions: (1) to have the gag removed so that he could communicate with his client; (2) to have statements made by you to the mother as well as the details of the bindings and gagging of the defendant be made part of the record; (3) to transfer this case to another court. All these motions except for the removal of the gag were denied. After the hearings, you directed the court reporter to delete the material with reference to the motion to remove defendant's gag although you had not gone off the record at the time.

FINDINGS

In the preliminary hearing in the matter of *People Byron Edward Smith*, No. A-268076, (Exh. 5) Judge Geiler ordered the court reporter to omit, from the transcript of the proceedings, all references in the reporter's notes to a motion to remove a gag from the defendant "so as not to prejudice the defendant."

CONCLUSION

Judge Geiler's action in the context of the proceedings before him was not unlawful in that it was an attempt to protect the defendant from suffering any prejudice as to

extraneous matters not going to establish probable cause or the identity of the perpetrator of the offense.

B. During the evening of August 7, 1970, you telephoned Mrs. Elaine Yvonne Flack, Court Reporter, and directed her to delete a sentence from the preliminary hearing transcript of *People* v. *Cuhel, et al.*, No. A260973.

FINDINGS

The allegations set forth in Court Five-B were not proved by clear and convicing evidence.

CONCLUSION

Not Proved.

C. During the preliminary hearing in the early part of 1970, you criticized Deputy Defender Mrs. Leslie Abramson for her wearing a granny gown. After the hearing, you directed the court reporter, Miss Betty Sue Pearson, to delete the material with reference to the reprimand of Mrs. Abramson for her attire although you had not gone off the record at the time.

FINDINGS

No evidence was offered in support of the allegations in Count Five-C.

CONCLUSION

Not Proved.

COUNT SIX

In nine preliminary hearings, you have *arbitrarily* and *capriciously relieved* the public defender and appointed private counsel. The defendants in all nine cases were eligible for representation by the Public Defender's Office. In all these cases, the Public Defender's Office was ready, willing, and able to properly represent the defendant. Private counsel in these cases entered a plea of guilty for

the defendant. In none of these nine cases was there an assertion of a conflict of interest. These cases are:

Case No.	*Defendant*	Date of Pub. Hrg.	*Counsel*
1. A-273884	Hakes, Kenneth	P. 6-30-71	Deputy Public Defender Robert M. Myman Private Counsel Ronald A. Litt
2. A-273885	Cole, John T.	6-30-71	Deputy Public Defender Kirkland R. Nyby Private Counsel Ronald A. Litt
3. A-274390	Dominguez, Luis Nelgado	6-30-71	Deputy Public Defender Robert M. Myman Private Counsel Ronald A. Litt
4. A-274440	Marquardt, Milton M.	8- 4-71	Deputy Public Defender David B. Davis Private Counsel Arnold M. Notkoff
5. A-274573	Oderda, Gregory	7- 6-71	Deputy Public Defender Jeanne Ross Private Counsel Carl Davis
6. A-274574	Saldati, Lewis P.	7- 6-71	Deputy Public Defender Jeanne Ross Private Counsel Carl Davis
7. A-275401	Ramirez, Francisco	7-28-71	Deputy Public Defender Stuart A. Chapman Private Counsel Arnold M. Notkoff
8. A-275617	Deever, John H.	8- 4-71	Deputy Public Defender David B. Davis Private Counsel Arnold M. Notkoff
9. A-275798	Ricketts, J. J.	8-10-71	Deputy Public Defender Mark R. Frazin Private Counsel John Weston

FINDINGS

In the nine preliminary hearings specified in count six, the Public Defender was relieved as counsel. The respective defendants were eligible for representation by the Public Defender and the Public Defender's office *was willing to represent each defendant.* In the eight escape cases Judge Geiler made a preliminary statement from the bench regarding his sentencing policy on escape cases where there was no evidence of violence or damage to property.

In each case the defendant advised the court of his desire to plead guilty to a misdemeanor, but the Public Defender refused to plead the defendant for the following reasons:

(1) *Hakes*—The Public Defender wanted to consolidate this matter with other pending Superior Court cases so that defendant might spend less time in jail.

(2) *Cole*—No evidence was offered to show any reason for the public defender's reluctance.

(3) *Dominguez*—Uncertainty as to the effect of a guilty plea on defendant's parole status.

(4) *Marquardt*—Refusal of Judge Geiler to make a record of the plea bargain.

(5) *Oderda*—Uncertainty as to the effect of a guilty plea on defendant's parole status.

(6) *Saldate*—The records of the proceedings before Judge Geiler do not reflect whether the Public Defender made any statement as to whether or not Saldate would plead guilty or the reasons why he should not do so, nor whether an opportunity was afforded to express the Public Defender's position.

(7) *Ramirez*—Disagreement with Judge Geiler over the length of sentence.

(8) *Deever*—Refusal of Judge Geiler to make a record of the plea bargain.

(9) *Ricketts*—Judge Geiler refused to give the Public Defender additional time to research a possible defense suggested by the defendant.

There was no evidence to show that there was a conflict of interest between the Public Defender and the defendants.

In each case private counsel was appointed at the request of the defendant for the purpose of the plea only and without compensation. Thereafter each defendant entered a guilty plea in compliance with *"In Re Tahl."*

After the pleas, the defendants in the escape cases received sentences ranging from 10 to 45 days in County Jail, consecutive. Defendant Dominguez pleaded guilty to misdemeanor possession of marijuana and was placed on probation and fined $100. No evidence was offered to show that any of the defendants were innocent of the charges.

Some members of the Public Defender's Office were quite hostile towards Judge Geiler. Judge Geiler also projected a hostile attitude toward some members of the Public Defender's Office. Since 1970 the Public Defender's office has attempted to limit the tour of duty of the Deputy Public Defenders assigned to Judge Geiler's court to a period of one week. Four of the five Deputy Public Defenders who testified regarding their being relieved as counsel by Judge Geiler had been admitted to practice law for periods of time *ranging from two to four months at that time.*

Deputy Public Defenders were required by office policy to obtain approval from a supervisor before pleading a defendant guilty to a misdemeanor at the time of a preliminary hearing in any municipal court. Additionally some public defenders were reluctant to plead a defendant guilty at this stage of the proceedings.

CONCLUSION

We conclude that Judge Geiler did not violate any statute when he relieved the Deputy Public Defenders in the nine cases, nor is there any analogous precedent or authority to guide a judge faced with the specific problems presented by these nine cases. While it may be argued that Judge Geiler interfered with the attorney-client relationship as between the public defenders and their clients, *his actions were in good faith and with the intent to dispense substantial* justice to both the people and the defendants. All of the cases were the type which probably would have become misdemeanors by sentence had the defendants been held to answer and pleaded guilty or been convicted in the Superior Court.

During the last few years there has been great public concern over the problem of trial court delay and congestion. In addition, prominent and respected lawyers and judges have also criticized the judicial system because of unnecessary delays in disposing of cases. It would appear that Judge Geiler was attempting to respond to this crisis in the court system by encouraging pleas of guilty in minor cases which would undoubtedly result in a misdemeanor disposition in the Superior Court.

Judge Geiler's refusal to permit plea bargains in the *Marquardt* and *Deever* cases to be placed "on the

record'' was petty, unreasonable and contrary to the rule set forth in *People* v. *West*. Judge Geiler's actions in relieving the Deputy Public Defenders occurred partially as a result of the mutually hostile atmosphere. This is certainly a classic example of the failure of two components of the criminal justice system to cooperate to the extent that is possible.

We have no desire to put a stamp of approval on the acts of, or sanction the procedures employed by Judge Geiler; nor do we wish unequivocally to condemn them either. Although his actions were arbitrary in some cases, they should not be characterized as capricious because they were made *in good faith.*

CONCLUSION AND RECOMMENDATION

We find that Judge Geiler's conduct was *prejudicial to the administration of justice and brought the judicial office into disrepute on the following counts:*

One-B, Three-A, Three-D, Three-G and Three-H.

As to the remaining counts we conclude that Judge Geiler was not guilty of wilful misconduct in office or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

Some evidence, particularly that given by Mrs. Diane Wayne (rambling and disjointed conversation); Mrs. Shirley Mae Estes (an explosive reprimand, followed by an abrupt unexplained change in mood), when coupled with the testimony of Mrs. Flack (re disrobing incident) and the touching of Commissioner Myrhvold in a public hallway, may *suggest psychiatric problems* that are beyond our knowledge and expertise. Additionally, this may serve to explain the *patent credibility* conflicts between Judge Geiler and many of the Examiner's witnesses.

We recommend Judge Geiler be censured for the following reasons:

1. *Indiscreet use of vulgar, unjudicial and inappropriate language directed toward court attaches and lawyers.*

2. *His crude and offensive conduct in public places.*

Respectfully submitted,

/s/ D. Sterry Fagan
D. Sterry Fagan

/s/ Arthur L. Alarcon
Arthur L. Alarcon

/s/ Peter S. Smith
Peter S. Smith